

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

Original Affidavit of Mailing

74-1412

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No. 74-1412

UNITED STATES OF AMERICA,

Appellee,

—against—

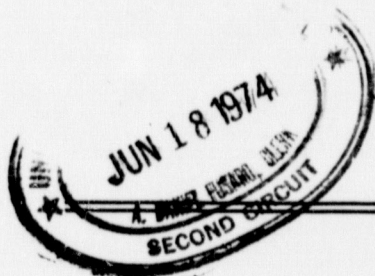
NICHOLAS VOWTERAS and NESTOR VOWTERAS,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

DAVID G. TRAGER,
*United States Attorney,
Eastern District of New York.*



PAGINATION AS IN ORIGINAL COPY

Index to Government's Appendix

	Page
Transcript of November 26, 1973.	A-1
Transcript I of November 27, 1973 (12:00 o'clock noon).	A-20
Transcript II of November 27, 1973 (12:00 o'clock noon).	A-50
Defendants' post-arrest statements (Government Exhibit 3500-1)	A-60
Letter of August 23, 1973.	A-67
Official Record of Exhibits Offered and Entered (Dated November 27, 1973)	A-68
Transcripts of Conversations (Government Exhibit 1).	A-70
Stipulation (Government Exhibit 15A)	A-108
Handwritten Statement of Kenneth Cooley (Government Exhibit 18)	A-111
Affidavit of Kenneth Cooley (Government Exhibit 19)	A-113
Photocopy of check (Government Exhibit 24)	A-115
Photocopy of check (Government Exhibit 24A).	A-116
Photocopy of check (Government Exhibit 24B).	A-117
Photocopy of withdrawal slip (Government Exhibit 24C).	A-118
Transcript of March 1, 1974 (10:00 A.M.)	A-119
Transcript of March 1, 1974 (2:00 P.M.)	A-125

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

A 1

3 -----X
4 UNITED STATES OF AMERICA :
5 -against- : 73 CR 583
6 MURRAY BARON, :
7 NICHOLAS VONTERAS, and :
8 NESTOR VONTERAS, :
9 Defendants. :
10 -----X

11 United States Courthouse
12 Brooklyn, New York

13 November 26, 1973

14 B e f o r e:

15 HONORABLE ORRIN G. JUDD, U.S.D.J.
16
17
18
19
20
21
22
23
24
25

I hereby certify that the foregoing is a
true and accurate transcript from my attend-
ance at the hearing in this proceeding.

OFFICIAL COURT REPORTER

Official Court Reporter
U. S. District Court

APPEARANCES:

ROBERT A. MORSE, ESQ.,
United States Attorney for the
Eastern District of New York

BY: PAUL BERGMAN, ESQ.,
Assistant United States Attorney

MICHAEL WASHOR, ESQ.,
Attorney for the defendant Baron

BENJAMIN LEWIS, ESQ.,
Attorney for the defendants Vowterras.

★ ★ ★ ★ ★

1
2 THE CLERK: United States of America versus
3 Murray Baron, Nicholas and Nestor Vowteras.

4 THE COURT: I have an engagement that I was
5 not sure I had.

6 I expect to be available by tomorrow noon.

7 Is everybody ready?

8 MR. WASHOR: Yes.

9 MR. BERGMAN: Your Honor, I know you are in the
10 middle of a trial, now, but I think it might serve
11 expedition if we took care of a few brief matters.

12 It is my understanding --

13 THE COURT: Wait a minute.

14 What is your name?

15 MR. LEWIS: Benjamin Lewis, your Honor.

16 THE COURT: And yours?

17 MR. LEWIS: This is my law partner.

18 MR. BERGMAN: Your Honor, it is my understanding
19 through discussion with counsel that the transcripts
20 which have been prepared by the government in this
21 particular case have had their accuracy conceded to
22 by both counsel --

23 MR. LEWIS: That is correct, your Honor.

24 MR. WASHOR: Yes.

25 MR. BERGMAN: I don't therefore believe

1
2 audibility hearings will be necessary.

3 MR. WASHOR: From the standpoint of Baron, we
4 have no desire for audibility hearings.

5 MR. BERGMAN: And I assume that goes for
6 counsel for the Vowterases.

7 MR. LEWIS: Yes, we waive any audibility
8 hearing.

9 MR. BERGMAN: I would like to mark, therefore,
10 as Government's Exhibit 1 for identification a copy
11 of the transcripts which have already been provided
12 to defense counsel.

13 THE COURT: All right, all right, so marked.

14 MR. BERGMAN: Now although I haven't questioned
15 counsel specifically, about it, I suppose the next
16 question would be as to whether or not the chain
17 of custody might also be stipulated to.

18 MR. WASHOR: As to what aspect?

19 MR. BERGMAN: Of the tapes.

20 THE COURT: Of the tapes?

21 MR. WASHOR: I have no objection.

22 MR. LEWIS: I have no objection, if we can
23 stipulate to that, or as to the basic fact, and I
24 join in the stipulation as to what happened with the
25 tapes, informally we can do it --

1
2 MR. BERGMAN: I don't think --

3 MR. LEWIS: Without the necessity --

4 MR. BERGMAN: I will assume that we will work
5 out something reasonable --

6 MR. LEWIS: I have one point --

7 MR. BERGMAN: Let me finish.

8 MR. LEWIS: I'm sorry; I thought you were
9 finished.

10 MR. BERGMAN: Now, in addition, your Honor, I
11 had previously supplied counsel with preliminary
12 transcripts in this case, and I'm not going to mark
13 the copies that we supplied them, and they have it
14 and they can use it as they wish on the trial.

15 I would also have marked as 3500 material -
16 one - the various statements given by the defendants
17 upon their arrest, copies of which have been given
18 to all defense counsel.

19 In other words, counsel have copies of co-
20 defendants' statements.

21 MR. WASHOR: Mr. Bergman, in connection with
22 that matter, may I --

23 MR. BERGMAN: Let me finish with my pitch,
24 then I will open the floor.

25 THE COURT: Yes.

1
2 MR. BERGMAN: I would also respectfully give
3 to the Court at this time requests to charge -- not
4 requests, questions for the voir dire.

5 THE COURT: All right.

6 MR. BERGMAN: I will give an original to the
7 Clerk, here, --

8 Copies are to counsel.

9 Mr. Washor?

10 MR. WASHOR: Surely.

11 THE COURT: All right.

12 Does anyone else have any voir dire to submit?

13 MR. LEWIS: Yes, I have them in my briefcase.

14 THE COURT: I will rule on them tomorrow.

15 MR. BERGMAN: This is the final matter I suppose
16 which I am concerned about, your Honor, is the
17 deBrisey and the Edwards case, which came down
18 from the Court of Appeals on November 7th, this month,
19 concerning the conflict of interest which may arise
20 of one counsel representing to defendants, and this
21 may have been raised formally before your Honor in
22 the past in connection with this case, but Nestor
23 Vowteras and Nicholas Vowteras are both represented
24 by Mr. Lewis, and his associate, Mr. Kitzis, and
25 I think the Court ought to be aware of that problem

1
2 and to the extent that you can define it --

3 THE COURT: Are they here, the defendants?

4 MR. LEWIS: Yes, your Honor, I became aware of
5 the DeBrisey case which was handed down in November
6 of 1973, a Second Circuit decision, and apparently
7 involved an attorney representing two defendants
8 where one defendant took the stand and one defendant
9 did not.

10 THE COURT: Yes.

11 MR. LEWIS: The way I read the case, your Honor,
12 it is possible for defendants to waive any conflict
13 of interest claimed.

14 THE COURT: I believe they waived it there.

15 MR. LEWIS: Well, I don't understand that to be
16 the reading of the case, your Honor.

17 THE COURT: My understanding is that a Court
18 runs the risk, if it doesn't examine the defendants
19 at the beginning of the trial as to facts which the
20 Court may not then be able to guess, in order to
21 determine whether a conflict of interests will develop
22 in the future.

23 MR. BERGMAN: Your Honor, the government is
24 prepared to make as many facts available to your Honor
25 as it has, and that would include material which came

1
2 under a 3500 decision nature.

3 MR. LEWIS: If I may read from the opinion, I
4 just picked it up, it is on page 5578 --

5 MR. BERGMAN: It is the official slip number?

6 MR. LEWIS: The official slip number.

7 Now, it speaks of each having a separate
8 counsel or that from the beginning, each understands
9 clearly the possibility of a conflict of interests
10 and that each waives any right in connection with it.

11 THE COURT: Will you give me what information
12 which you think may be helpful?

13 MR. BERGMAN: Let me say, I have given all of
14 that information to counsel, I think they have it
15 from the tape, and what I want to do for your
16 Honor, if you will just permit my rumination in the
17 case, this case involves the defendants and I would
18 appreciate if they were to step up to the bar so they
19 can hear what I am going to say.

20 THE COURT: All right.

21 (Nicholas and Nestor Vowterras then stepped up
22 to the bar)

23 MR. BERGMAN: Your Honor, basically, of course,
24 it is a bribery case, the first count involves a
25 conspiracy which runs from October 11, 1972, until

1
2 December 27, 1972, and it involves the routine audit
3 of the tax return of the Argo Compressor Service
4 Corporation, and Mr. Nestor and Mr. Nicholas Vowtera
5 are both officers of that corporation, owning
6 respectively something in the neighborhood of 46
7 percent of the corporate stock, it is a closed
8 corporation and there are two other officers and I
9 suppose, two other shareholders of minimal amounts.

10 Now at the first crucial meeting, and this
11 was on October 11th, the government believes, an
12 alleged overture was made by the accountant, to the
13 Internal Revenue agent, a bribe overture at that
14 time.

15 Thereafter, there were three subsequent meet-
16 ings at the Argo Compressor Service Corporation,
17 that would be November 29th, December 21st and
18 December 27th, and those meetings were recorded by
19 a tape machine.

20 Basically, at the November 29th meeting, the
21 crucial conversations which will be related by the
22 government in its case involved primarily Mr. Baron
23 and Mr. Nicholas Vowteras.

24 Mr. Nestor Vowteras was not involved in those
25 conversations.

1
2
3 Now to characterize them generally, although
4 not specifically, an offer of a bribe was made at
5 those meetings and the implication of such an offer
6 was made by the defendant, Nicholas Vowteras, in these
7 words, to the effect, "We would show our appreciation,
8 can't you see some way to handle the situation?"

9 By that point, of course, the tax deficiency
10 had arisen in connection with the audit.

11 Thereafter the bribe came, payments themselves
12 were not made by Nicholas Vowteras, but rather,
13 according to the government's evidence, by the
14 defendant Baron, and that was \$500 in liquor, on
15 December 23rd, \$4,500, on December 21st by the
16 defendant Nestor Vowteras, and finally, \$10,000 on
17 December 27th, again by Nestor Vowteras.

18 Now, at that December 27th meeting, both
19 Vowteras were present when they stated to the
20 agent, and this of course is on tape, that they were
21 both aware and the only ones aware, I might add, of
22 this.

23 Mr. WASHOR: Thank you very much.

24 THE COURT: Of it?

25 MR. BERGMAN: Of the bribes paid to Mr. Cooley,
who was the Internal Revenue agent.

Again, I say, these are my ruminations.

It would seem to me that in the posture of this case, and I don't suggest that it is a viable defense, that the defendant, Nestor Vowteras could conceivably have a defense of entrapment, but that the defendant, Nicholas Vowteras, could have a defense of no involvement in the actual bribe payments.

In other words, it is conceivable that Nicholas Vowteras could admit he had knowledge of these bribes, that at the same time, that he did not participate in the events such as to make him criminally responsible.

That, I suppose, in a nutshell, is what I would perceive as a random observer to be the conflict.

THE COURT: All right.

Mr. Lewis, what have you to say?

MR. LEWIS: Of course, with what Mr. Bergman says, I don't agree completely, but there is a possibility, I must concede a possibility, that there could be separate, distinct defenses.

However, certainly our defense will not be based on any perjurious statements.

1
2 We have considered this and discussed this at
3 length with both my clients present, we have a joint
4 defense that we intend to put forward.

5 THE COURT: Well, let me just ask you this:

6 Mr. Nicholas Vowteras --

7 THE DEFENDANT NICHOLAS VOWTERAS: Yes, your
8 Honor?

9 THE COURT: You heard what Mr. Bergman said and
10 it is possible that you were at only one or two of
11 the conversations, and you might ask yourself whether
12 you would want to put in a different defense from
13 your brother?

14 THE DEFENDANT NICHOLAS VOWTERAS: That is right.

15 THE COURT: Is it your brother?

16 MR. NICHOLAS VOWTERAS: Yes, your Honor.

17 THE COURT: I don't want to be in a position
18 where I have to try the case twice because you
19 change your mind later about a joint representation.

20 It is more important to me to have just one
21 trial than it is for you to have saved a little
22 money on attorney fees.

23 Are you satisfied about this matter?

24 MR. NICHOLAS VOWTERAS: Yes, I am, your Honor.

25 THE COURT: And Mr. Nestor Vowteras, you also

1
2 might be able to have a different defense from your
3 brother's, and the attorney has to represent you both
4 as well as he can, but if you want to have separate
5 representation, now is the time to tell me.

6 MR. NESTOR VOWTERAS: No, I'm satisfied with it

7 THE COURT: Will you be satisfied if it turns
8 out later on that you are convicted and if then
9 some second lawyer says there might have been a
10 different way to treat one of you than the other?

11 MR. NESTOR VOWTERAS: I have to leave that
12 to Mr. Lewis.

13 THE COURT: What did you say?

14 MR. NESTOR VOWTERAS: I have to leave that
15 to Mr. Lewis.

16 MR. LEWIS: Your Honor, I've represented this
17 on several occasions to them, much more after the
18 coming down of the DeBrisey case, I made it clear
19 to them that at a certain part of the case, a client
20 must make a decision as well as an attorney.

21 THE COURT: Yes.

22 MR. LEWIS: We try to make most decisions which
23 we can for our clients.

24 THE COURT: You can think about it until
25 tomorrow morning, although I don't like to give

1
2 last-minute adjournments for lack of counsel.

3 MR. NICHOLAS VOWTERAS: My mind is made up.

4 MR. NESTOR VOWTERAS: I will go along with that,
5 too.

#2 6 THE COURT: All right, all right, all right.

7 MR. BERGMAN: I don't want to impinge because
8 I don't understand the DeBrisey decision any more than
9 anybody else does, but it seems that the same kind
10 of inquiry that your Honor made was made by Judge
11 Mishler, and in fact had been made by myself in
12 connection with a case before Judge Dooling many
13 months ago, and I don't know if that passes muster
14 because what happened in the DeBrisey case was, counsel
15 was asked what they would testify to on the stand and
16 counsel gave no indication of a conflict.

17 Now in Edwards, of course, Edwards did do
18 that.

19 There is an impingement on the right to
20 representation by counsel and the Courts have said
21 that two people can have the same counsel if they
22 wish.

23 THE COURT: Well, they will have a chance to
24 think on it overnight.

25 I will put this over until eleven o'clock.

1
2 MR. BERGMAN: I think Mr. Washor has something.

3 MR. WASHOR: Regarding the statements, regarding
4 the statements that were given to counsel by
5 Mr. Bergman, I have reason to believe -- I believe
6 that a statement was also made to Mr. Boyd, the
7 Assistant United States Attorney.

8 MR. BERGMAN: I understand such a statement
9 was made, but I have not spoken to Mr. Boyd about
10 this.

11 The records that I have seen don't contain
12 any memorialization of it but I'm sure Mr. Boyd is
13 available.

14 THE COURT: You talk to him and tell Mr. Washor
15 what he says, or you can make an appointment for
16 Mr. Washor to see him tomorrow morning.

17 MR. BERGMAN: Both counsel were in my office,
18 we were listening to the tapes.

19 MR. WASHOR: I have discussed a motion for a
20 severance with Mr. Bergman for many, many, many,
21 many months, and it has not been made in writing
22 because I have had vacillations and also from a
23 tactical standpoint, when we want a separate and
24 distinct trial, and secondly, at certain junctures I
25 was satisfied that in a case charging a crime of

1
2 conspiracy, the Courts are more likely not to exer --
3 cise this discretion --

4 THE COURT: Right.

5 MR. WASHOR: (continuing) -- and grant a
6 severance.

7 However, I will make the motion orally and just
8 state to the Court the reasons for my motion for your
9 consideration, and that in the first instance is
10 that as a result of the discovery and inspection as
11 well as the disclosures made by the government to
12 counsel, it has come to my attention that there are
13 statements by the co-defendants, if I can character-
14 ize them for this moment as the Vowteras brothers,
15 that do in fact inculcate the defendant Barron,
16 and these are hearsay statements not made in the
17 presence of the defendant Baron.

18 Now I have taken the liberty of researching
19 the law, I think the Court is familiar with United
20 States against Fuccio, which deals with a situation
21 of the admission of statements of a hearsay nature
22 out of the presence of a defendant --

23 THE COURT: You mean statements after the
24 arrest, after the bribe?

25 MR. BERGMAN: I think Mr. Washor is referring

1
2 to statements made during the course of the conspir-
3 acy.

4 MR. WASHOR: During the course -- I mean, in
5 Puccio, the situation occurred when the defendant,
6 that is, the co-defendant, was seated in a car with
7 an agent, if I remember the factual pattern, and
8 in words and in effect, he said to the agent, There
9 is my contact, that is him now.

10 Thereafter, the defendant, Puccio, walked
11 into a hallway and the co-defendant went into the
12 hallway, there was an exchange --

13 MR. BERGMAN: That is the Pucco case.

14 MR. WASHOR: Pucco, Pucco.

15 So there arose the question of that statement
16 made by the co-defendant and its admission that it
17 was made in the absence of the defendant, Pucco.

18 THE COURT: No, but here you have conversation
19 between Barron and one of the Cowterases with the
20 agent, and with both out of his presence, at any
21 time.

22 MR. WASHOR: That is one set of facts, but we
23 have many sets of facts and testimony and statements
24 that the Court is not yet aware of, wherein the
25 defendant, Baron, was not present at the conversation

1
2 by and between anyone or both of the brothers
3 Vowteras and the agent.

4 THE COURT: If they were acting in concert,
5 it is not necessary.

6 MR. WASHOR: Well, that is a problem that he will
7 be confronted with at the trial.

8 THE COURT: All right.

9 MR. WASHOR: Now, in addition to that, the
10 defendant Baron's position at this juncture, because
11 of the discovery and the disclosure, will be to
12 remain silent and invoke the Fifth Amendment and not
13 testify.

14 Of course, I'm not binding the defendant, we
15 can of course change our position later on, but in
16 light of the statements that would be offered in
17 evidence and which the Court may well accept, this
18 would infringe on the Fifth Amendment right of the
19 defendant, Baron.

20 Further, --

21 THE COURT: Not any more than at any conspiracy
22 trial, where --

23 MR. WASHOR: I appreciate that.

24 THE COURT: (continuing) -- where some of the
25 defendants don't testify.

1
2
3 MR. WASHOR: We have an added fact, your
4 Honor, and I appreciate what your Honor has said
5 of the defenses, and I have been led to believe that,
6 I have been led to believe that the defense will be
7 proffered by the brothers Vowteras, -- that they
8 are in a sense trying to bring a defense of entrap-
9 ment, and they predicate the defense on the grounds,
10 in a sense, that Baron, the co-defendant, was instru-
11 mental in setting them up along with the agents, and
12 giving him the blame partly, or all of the blame.

13 Now I cannot see how, in all honesty, this man
14 who wants to invoke his Fifth Amendment rights to
15 remain silent, he, a co-defendant, how he can do so
16 without having his Fifth Amendment rights infringed
17 upon with that type of defense being proffered.

18 THE COURT: Well, you can renew the motion in
19 the morning.

20 I will consider it overnight.

21 MR. WASHOR: All right, thank you.

22 MR. BERGMAN: 11 o'clock tomorrow?

23 THE COURT: We will adjourn this until tomorrow
24 so I can get this one finished.

25 Thank you.

MR. WASHOR: Thank you, your Honor.

MR. LEWIS: Thank you, sir.

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----X

5 UNITED STATES OF AMERICA, :

6 Plaintiff, :

7 -against- :

73-CR-583

8 MURRAY BARON, NICHOLAS VOWTERAS, :
9 NESTOR VOWTERAS, :

10 Defendants. :
11 -----X

12 United States Courthouse
13 Brooklyn, New York

14 November 27, 1973
15 12:00 o'clock noon

16 B e f o r e :

17 HON. ORRIN G. JUDD,
18

19 U.S.D.J.
20

21
22
23
24
25
I hereby certify that the foregoing is a true and correct copy of the original as filed in the U.S. District Court of N.Y.

DANIEL D. SIMON
CHIEF OFFICIAL COURT REPORTER

2 A p p e a r a n c e s :

3
4 ROBERT A. MORSE
United States Attorney
5 Eastern District of New York

6 By: PAUL B. BERGMAN
Assistant United States Attorney

7
8 MICHAEL WASHOR, ESQ.
Attorney for Defendant Baron

9
10 BENJAMIN LEWIS, ESQ.
and

11 DAVID KITZES, ESQ.

Attorney for Nicholas Vowteras & Nestor Vowteras

12
13 * * *
14
15
16
17
18
19
20
21
22
23
24
25

1
2 THE COURT: I said we will permit
3 twelve peremptory challenges to be divided
4 among the defendants.

5 The government, of course, remains at
6 six.

7 I have reviewed the proposed questions
8 for voir dire as submitted by Mr. Lewis, Mr.
9 Bergman, and I will give them all in substance
10 except that eight and nine of the defendant's
11 will be phrased in terms of statements of law - -
12 the requests - - whether anyone disagrees.

13 Number five of the government I further
14 feel, whether they have been dealt with fairly,
15 after being informed - - whether they are left
16 after any audit with any feeling of prejudice
17 that would affect them in their decision of the
18 case. I do not think it is really appropriate
19 to ask for endorsement of the Internal Revenue
20 Service in front of all the panel.

21 I ask counsel to consider further the
22 question of conflict of interest.

23 I have read the DeBerry case which the
24 Court of Appeals decided on November 7th, and
25 that was one where representation of two

1
2 defendants by the same counsel was held to
3 justify requiring a new trial for both because
4 of actual prejudice shown in that ^{there is} evidence ^{that}
5 that one defendant tried to throw the blame on,
6 the other.

7 And I would invite Mr. Lewis to tell me
8 what he can with respect to the situation here.
9 And I am invited by the DeBerry case to hold a
10 hearing. We had some discussion yesterday.

11 MR. LEWIS: Your Honor, it is obvious
12 for reasons well known to his Honor that to
13 discuss our complete defense at this time is not
14 a wise move of defense counsel. However, I must
15 state that there is a real possibility that only
16 one of the defendants may take the stand and one
17 may not take the stand.

18 It is difficult to characterize it as
19 one putting the blame on the other. I believe
20 it would be a unified defense. However, it
21 could possibly have another interpretation and I
22 would really rather not venture an opinion in
23 that respect. But I do suggest to the court that
24 that is a possibility.

25 MR. WASHOR: Your Honor, I think, even

1
2 though the question is in a sense directed
3 at the accused Vowteras, the position of the
4 defendant Baron should at least be known at
5 this juncture so that the court is possibly
6 apprised of shall we say the approach that may
7 well lead to the problem that you are concerned
8 with at this juncture.

9 In the first instance there is a tape
10 recording - - one of the defendants Vowteras - -
11 I am not sure whether it is Nicholas or the
12 other gentleman, Nestor - - wherein a statement
13 will be offered in evidence by the prosecution
14 via a tape recording and also a transcript
15 unequivocally indicating that when Agent Cooley
16 asked this gentleman who is involved, the answer
17 being, " . . . just the two of us, my brother
18 and I . . . " This comes into play and becomes
19 important when you consider the fact that one
20 of the Vowterases may not be testifying, which
21 one it is I don't know, whether it is the
22 individual that made such a statement to the
23 agent, I don't know. But you can appreciate the
24 right of confrontation and the problems that come
25 to the defendant Baron if the individual who

1
2 invokes the Fifth Amendment, and has the
3 right to remain silent at the trial, is the one
4 that made such a statement.

5 THE COURT: Yes.

6 MR. BERGMAN: May I interject? I think
7 Mr. Washor's argument falls because - -

8 MR. WASHOR: Well, you didn't let me
9 finish.

10 MR. BERGMAN: - - for the simple reason
11 unless both defendants invoke the Fifth Amendment,
12 the statements made were made in the presence - -
13 each in the presence of the other. That is on
14 the final tape on December 27th where both the
15 Vowteras defendants state that they are the only
16 ones that had anything to do with it. Either it
17 is an adoptive admission, or made by both of them;
18 I am not sure. I would have to refresh my
19 recollection from the transcript.

20 MR. LEWIS: With all due respect to
21 counsel, Mr. Washor - -

22 THE COURT: Well, let Mr. Washor finish.

23 MR. LEWIS: I am sorry.

24 MR. WASHOR: In addition to that problem
25 and as a result of discovery and inspection

1
2 disclosure made by the government counsel, I
3 have a statement of one of the Vowterases made
4 on or about the time of the arrest, which in a
5 sense admits guilt as to that defendant, but
6 does not inculcate the defendant Baron. So
7 that if that one defendant Vowterase would be
8 exercising the right of the Fifth Amendment to
9 remain silent, your Honor, a serious question of
10 the right of confrontation with Baron would also
11 be raised.

12 I recognize that these type of statements
13 may well be admissible under the conspiratorial
14 count as either an overt act in furtherance of
15 the conspiracy or as part of the body of the
16 conspiracy itself. But the truth of those state-
17 ments quite obviously can have grave bearing on
18 the guilt and/or in ^{IN RE COUSSE} a sense of the defendant Baron.

19 THE COURT: You are really rearguing your
20 motion for a severance. You are not addressing
21 yourself to the question of whether you should
22 have one counsel represent two brothers.

23 MR. WASHOR: Well, I should suggest that
24 is the point of the exercise, your Honor, yes.

25 MR. BERGMAN: Your Honor, may I interject

1
2 a moment? I am not interested in of course
3 making a record in this case sufficient so
4 that the Court of Appeals may possibly recognize
5 some distinction as between this case and the
6 DeBerry case in the event that your Honor
7 continues Mr. Lewis as counsel for both defendants
8 or doesn't.

9 And I am prepared in that regard to make
10 available all the 3500 material in this case to
11 counsel, and in fact respond to any questions
12 that they may have of me now with respect to the
13 evidence that the government is going to produce.

14 I think the government has given liberal
15 disclosure in this case up to now and we are
16 prepared now to further liberalize it in an effort
17 to enable counsel for the Vowterases as well as
18 the Vowterases to exercise a meaningful judgment
19 as to whether or not this representation is to
20 continue now.

21 MR. LEWIS: As I tried to say before,
22 with all due respect to Mr. Washor, I say he has
23 no standing to speak on the subject matter. I
24 think it is between my clients, the court and
25 myself.

1
2 THE COURT: Yes. But I think there was
3 always a problem like this in a joint trial.

4 And the answer is if you have a separate
5 trial the defendant you may want to call may
6 still refuse to testify.

7 MR. WASHOR: Except the problem that is
8 involved here is that at least there is subpoena
9 power and also calling a co-defendant to testify
10 who you know in advance or may suspect may well
11 invoke the Fifth Amendment may very well prejudice
12 you - - not only the party invoking the Fifth
13 which is not my grave concern - - but it may
14 prejudice the defendant Baron.

15 THE COURT: Well, I am not going to sever.

16 MR. WASHOR: All right.

17 THE COURT: Now are you suggesting, Mr.
18 Lewis, that you think there should be separate
19 counsel, and, if so, have you made preparations
20 for it?

21 MR. LEWIS: I have not made that suggestion,
22 your Honor. I would certainly - - I feel perhaps
23 it should be up to my clients, perhaps with the
24 guidance of the court. But I allude back to Mr.
25 Bergman's suggestion that he would make available

1
2 the 3500 material and the sequence of his
3 evidence, and perhaps that might aid us in coming to
4 a decision in this respect.

5 THE COURT: All right. Well suppose we
6 take a half-hour to do that. It may delay the
7 picking of the jury. But we must proceed.

8 With respect to the two brothers I think
9 the question that they should consider is whether
10 either of them hopes that he will get off with
11 his brother found guilty, or whether they both
12 really recognize that it was a joint venture, and
13 that's really their choice. There are two
14 problems, a right to choose your own lawyer and
15 also a right to have a lawyer who will not be
16 tempted to even sacrifice your interests for your
17 brother's.

18 Mark the 3500 material.

19 We will take a short recess.

20 MR. BERGMAN: I assume that Mr. Washor
21 would not object if I included him in the 3500
22 material.

23 MR. WASHOR: For the record I will object
24 just to be different, but I will accept the
25 material graciously.

MR. LEWIS: Your Honor, before we go on, would it be appropriate to take up some other pretrial points?

THE COURT: Yes.

MR. LEWIS: That we would like to discuss.

THE COURT: Yes.

MR. LEWIS: I believe it was at the arraignment and upon request of Mr. Bergman, which he opposed, the right to examine the personnel file of the complaining revenue agent in this case. I believe it was your Honor's view you would inspect it in camera. And we wanted it limited to the areas of previous reporting of bribes or bribe attempts by the revenue agent.

MR. BERGMAN: Yes. I have offered to Mr. Lewis and I think Mr. Washor the opportunity to interview government witnesses, or Mr. Cooley, and those questions could have been asked.

I have the personnel file here, and that contains an awful lot of stuff which shouldn't have been seen by me, and I am sorry I looked at it. And I certainly do not think it should be seen by anybody else except your Honor of course.

Mr. Cooley is sitting in the back of the

1
2 courtroom.

3 If you want to ask him any questions
4 about prior bribe attempts you are welcome to
5 ask him now.

6 THE COURT: Well, I think the defendants
7 want to be not bound by his testimony if the
8 record shows other bribe attempts. Maybe I ought
9 to look at that.

10 MR. BERGMAN: In point of fact, your Honor,
11 there had been a prior bribe attempt or overture
12 at least made to Mr. Cooley. And that is a pending
13 case now.

14 Now, I would suppose that as a matter
15 of privilege counsel ought not to go beyond the
16 fact of a prior bribe - - an attempt was made - -
17 that of course would severely prejudice what
18 pending investigation the government has.

19 MR. WASHOR: Can we ascertain whether that
20 has matured itself into an arrest?

21 MR. BERGMAN: I am telling you it has not
22 matured into an arrest. That is precisely why
23 the government wishes the court to direct counsel
24 to tread softly on it.

25 THE COURT: Well, I think that you are

1
2 right in that there should not be any inquiry
3 into the details of that.

4 MR. LEWIS: Your Honor, I just renew my
5 request that the court inspect the file in camera,
6 or perhaps with counsel as officers of the court
7 in that respect, and a decision be made as to
8 what part may be used and what part may not be
9 used.

10 MR. BERGMAN: Well, may I make this
11 suggestion, if counsel would indicate what areas
12 of inquiry they are interested in we could cull
13 the particular matters from the file and submit
14 it to the court or submit the whole file.

15 MR. LEWIS: Well, we are interested
16 definitely in the area of what commendation,
17 promotion, in what benefits perhaps with the
18 state of mind of the agent at the time of his
19 original interview with the taxpayers and Mr.
20 Baron. That is about the outer limits of what
21 we want from the file. I don't care when he
22 was born and what school he went to at this time.

23 THE COURT: Yes.

24 MR. BERGMAN: All right, I will cull - -
25 shall I give him the entire file?

1
2 THE COURT: Let me look at the file.

3 I will be able to determine what need not take
4 any time.

5 MR. LEWIS: There are a few more areas,
6 your Honor, if I may.

7 THE COURT: Yes.

8 MR. LEWIS: There were statements made
9 by all three defendants at the time of the arrest.
10 From the reports the defendant - - the rights
11 were given but no counsel was present at the time
12 statements were made.

13 We will run into a problem now - - I
14 think perhaps we drift down into Bruton in some
15 respects. This will also apply to certain portions
16 of the tape. For example we have on the tape at
17 one point Mr. Baron in the conversation with Cooley
18 and Cooley alone in the restaurant, and he says,
19 "They are very generous people."

20 Now normally that is a commendation. But
21 in this case, of course, this is inculpatory or
22 could be inculpatory.

23 THE COURT: Yes.

24 MR. LEWIS: I think under the Bruton case
25 and in the cases that followed, the sort of cases

1
2 alluded to yesterday, there may be a question
3 of the government's burden to establish conspiracy
4 before they can offer such statements in respect
5 to - - now assuming further - -

6 THE COURT: When was this in relation
7 to the arrest?

8 MR. LEWIS: This is prior to the arrest.
9 But the same theory would apply to statements
10 made after the arrest.

11 THE COURT: Well, they are different,
12 aren't they? If there is a conspiracy shown,
13 something before the arrest, I suppose it is
14 admissible.

15 MR. LEWIS: Well, that is one point,
16 your Honor, that the government is alleging a
17 conspiracy. But at this point, of course, they
18 haven't given any evidence as to the conspiracy.

19 THE COURT: Yes.

20 MR. LEWIS: To go forward on that basis,
21 your Honor, they will introduce statements, and
22 that if there is no conspiracy or the court
23 finds he will not charge a conspiracy, that
24 there was a statement made, that would be highly
25 prejudicial. We are sort of stuck with it.

THE COURT: There is no Bruton aspect.

MR. BERGMAN: There is no Bruton aspect because the government does not intend to introduce any of the post-arrest statements made by the defendants.

MR. WASHOR: Your Honor, let me interject. The government may not be interested in introducing that statement but I think the defendant Baron has an absolute right to cross-examine any one of the defendants who takes the stand, or any one of the government witnesses who was privy to the statement which exculpates the defendant Baron albeit inculcates the individual who made the statement himself.

THE COURT: Well, it may not exculpate Baron.

MR. WASHOR: Well, when an individual says that I did it by myself. No one else had anything to do with it, your Honor, in a sense whether it is true or not - -

THE COURT: What he said is that they were generous people.

MR. WASHOR: No, I am talking about post or

1
2 conspiratorial - -

3 THE COURT: Let us stick to one thing.
4 Don't skip around.

5 MR. BERGMAN: The government is mindful,
6 of the necessity of establishing either a
7 joint venture, or in this case, of course, a
8 conspiracy as charged, and mindful of establishing
9 proof aliunde sufficient to warrant the
10 reception of those statements as against the
11 people who are referred to in the statements,
12 nevertheless they would still be at the time
13 that they were admitted admissible against the
14 individual making those statements. And I
15 don't recall whether that particular statement
16 comes at a point where the conspiracy has already
17 been established, and I tend to think it does,
18 but I am not that certain. But in any event it
19 would be admissible at that time against the
20 defendant Baron as a statement made by him.

21 And whether or not subsequent evidence developed
22 in the government's case which would warrant - -

23 THE COURT: Is Cooley going to testify
24 that he was at conferences with all three?

25 MR. BERGMAN: Well, the first conference,

1
2 which was October 11th, included basically - -
3 from time to time all the people were there - -
4 the same thing on the 29th of November, although
5 primarily it was Mr. Nicholas Vowteras. On the
6 21st his dealings are primarily Mr. Baron and
7 Nestor Vowteras as it is - - and on the 27th, the
8 final meeting, his dealings are exclusively with
9 Nicholas and Nestor Vowteras.

10 But generally his involvement with all
11 three defendants is spread throughout those
12 meetings with the exception of the last meeting
13 of the 27th where he does not see Baron.

14 MR. WASHOR: Might we indicate to the
15 court, Mr. Bergman, that the first two meetings
16 concededly do not involve any alleged impropriety?

17 MR. BERGMAN: No, I do not concede that at
18 all.

19 The indictment is framed as between the
20 11th of October and the 27th of December.

21 The government theory in this case is
22 that this was a continuing offer, promise, and
23 eventual bribe in this case, and the bribe
24 extended over that period of time.

25 THE COURT: Well, why don't you mark the

3500 material?

MR. BERGMAN: Your Honor, I would like to deliver the office personnel folder of Kenneth M. Cooley.

THE COURT: It is not that big.

MR. BERGMAN: Well, he is a young fellow so it is not that big yet.

MR. WASHOR: Can we possibly direct our attention to the arrest statements?

MR. BERGMAN: I have the 3500 material.

THE COURT: Let's mark the 3500 material.

MR. BERGMAN: We already have 3500-1.

This would be 3500-2.

I am marking the folder itself, your Honor, the red folder, and it contains within the audit file of Kenneth M. Cooley in connection with his audit of the Argo Compressor Service Corporation.

THE CLERK: So marked Government's Exhibit 3500-2.

(Document referred to was received and marked Government's Exhibit 3500-2.)

MR. BERGMAN: And I have copies of the contents of the file for counsel which I am now

1
2 giving to them.

3 Let the record show that I am giving
4 two copies to Mr. Kitzes and Mr. Lewis, and
5 one copy to Mr. Washor.

6 It's 3500 Exhibit 3, this would be the
7 tax return for Argo Compressor Service Corporation
8 for the fiscal year ending September 30, 1971,
9 copies of which I am giving to counsel.

10 THE CLERK: So marked 3500-3.

11 (Document referred to was received
12 and marked Government's Exhibit 3500-3.)

13 THE COURT: Well, I would think they
14 have this already. But it is perfectly proper
15 to give them the government's copy - -

16 MR. BERGMAN: Well, it contains some
17 other material, your Honor.

18 It's 3500-4, these are recent summary
19 transcripts of the tapes in this case prepared
20 by Mr. Cooley.

21 THE COURT: Summaries?

22 MR. BERGMAN: Summaries. They are
23 summaries. I hate to use the word summaries
24 but they are summaries. They are not verbatim.
25 But at times they become verbatim. I suppose

1
2 these are more in the nature of attorney work
3 product. But I do not see any reason not to
4 give it to them.

5 THE CLERK: Marked 3500-4.

6 (Document referred to was received
7 and marked Government's Exhibit 3500-4.)

8 THE COURT: Well, haven't these been
9 available before?

10 MR. BERGMAN: The ones that were made
11 available before overlap, that is true, your
12 Honor. They were typed versions of purported
13 actual transcripts with some narrative in-
14 between.

15 THE COURT: I thought I was told yesterday
16 that there was agreement that the transcripts
17 were accurate.

18 MR. BERGMAN: Yes. We entered into a
19 stipulation, as a matter of fact, concerning
20 that, but these are just additional materials.

21 THE COURT: All right.

22 MR. BERGMAN: As 3500 Exhibit 5. this is
23 a two-page document written by Mr. Cooley, and
24 it is dated December 21, 1972.

25 It is his own account of the events of

1
2 that day or portions of the events.

3 THE CLERK: Marked 3500-5.

4 (Document referred to was received
5 and marked Government's Exhibit 3500-5.)

6 MR. BERGMAN: Copies of which I am
7 giving to all counsel.

8 3500 Exhibit 6, it would be the grand
9 jury testimony of Kenneth Cooley, twenty-four
10 pages worth, copies of which are being given
11 to counsel.

12 THE CLERK: So marked 3500-6.

13 (Document referred to was received and
14 marked Government's Exhibit 3500-6.)

15 MR. BERGMAN: 3500-7 would be a single
16 page document with writing on both sides
17 prepared by Mr. Cooley on October 11, 1972.

18 THE CLERK: Marked Government's Exhibit
19 3500-7.

20 MR. BERGMAN: Copies of which are being
21 given to counsel.

22 (3500-7, so marked.)

23 MR. BERGMAN: 3500-8 is a two-page
24 affidavit prepared by Mr. Cooley on October 12th
25 and executed on October 13th, I believe, of 1972,

1
2 copies of which are being given to all counsel.

3 THE CLERK: So marked 3500-8.

4 (Document referred to was received
5 and marked Government's Exhibit 3500-8.)

6 MR. BERGMAN: That is it.

7 THE COURT: All right.

8 MR. LEWIS: Your Honor, I have two
9 other points before we recess, if I may.

10 Mr. Bergman just solved one problem
11 in saying that he doesn't intend to use the
12 arrest statements of the defendants.

13 MR. BERGMAN: Well, I would clarify that
14 a little bit. I do not intend to use them on
15 the government's direct case.

16 MR. LEWIS: Well, the question of course
17 would be a Miranda hearing with respect to the
18 use or admissibility.

19 Now, in any event those statements
20 of Mr. Nicholas and Mr. Nestor Vowterras have
21 been turned over to Mr. Washor. If it fails
22 the test of Miranda I would request a ruling
23 from the court that they not be used on cross-
24 examination as being tainted.

25 THE COURT: What about the Harris case?

1
2 MR. LEWIS: That is where it was used
3 for impeachment purposes?

4 THE COURT: Yes.

5 MR. LEWIS: Well, then we would request,
6 a Miranda hearing to see if the statements
7 were accurate at least, if they are proper
8 statements.

9 MR. WASHOR: You've got the added problem
10 if the government doesn't use the statements, as
11 I have indicated before, and to reiterate for
12 continuity for the record, I have every intention,
13 if the court would permit, of using the statement
14 myself because I believe that it shows inculpa-
15 bility on behalf of the Vowterases and exculpability
16 on behalf of the defendant Baron. It can be used
17 for the truth of such statement and well could go
18 to the guilt or innocence of the defendant Baron.

19 MR. LEWIS: Could counsel submit a brief
20 on that point, your Honor? I am not prepared to
21 argue it.

22 THE COURT: Well, we are not going to get
23 to this until the government's case is complete
24 and one or more of the defendants takes the stand,
25 or Mr. Washor claim of a right to call him, is

1
2 that right?

3 MR. WASHOR: Well, your Honor, that
4 information of the statement made by the
5 defendant Vowteras, whoever made the statement,
6 was it Nick or Nestor.

7 MR. LEWIS: They each did - - you are
8 probably talking about Nestor.

9 MR. WASHOR: He may exercise his right
10 not to take the witness stand and of course as
11 an officer of the court if I know that in
12 advance I cannot call him. That would be highly
13 improper. I recognize that. However there may
14 be agents available who in fact did take the
15 statement and I would have, if they are called,
16 the right to question them about the statement
17 or in the alternative I think I would have an
18 absolute right to call them as my witness because
19 the conspiracy charges all three with the crime.
20 And I believe that we have the right to show non-
21 conspiratorial conduct the same way that statements
22 are made by a co-conspirator allegedly in furtherance
23 of the conspiracy, I believe that statements that
24 are made by an alleged co-conspirator that limits
25 the conspiracy as to who the participants are,

1
2 they are just as well admissible, the same basic
3 theory of law is applicable.

4 THE COURT: These are post-arrest statements.

5 What is the Miranda question on this,
6 Mr. Lewis?

7 MR. LEWIS: Well, whether they really
8 understood their rights intelligently at the
9 time the statements were made, and also the
10 question - - I know in many cases - - and in
11 knowing these people have no criminal record and
12 are members in good standing in the community,
13 why an arrest had to be made. One may wonder
14 whether an arrest was made purely to give the
15 government agents an opportunity to exercise
16 their power to get a statement.

17 MR. BERGMAN: I am not quite sure what is
18 going on here. But it seems to me that two things
19 are happening, your Honor, first of all Mr. Lewis
20 is contending that before Mr. Washor can use the
21 arrest statement which he considers Brady material,
22 I suppose, made by Nestor Vowteras, and Mr. Washor
23 indirectly must establish that the Miranda warnings
24 were given Mr. Nestor Vowteras. And I know of no
25 such ruling of law.

1
2 MR. WASHOR: I concur.

3 MR. BERGMAN: But in any event so far
4 as Mr. Washor is concerned as to Brady implications
5 of the statement, I would merely state that it
6 would be cumulative of what will already be in
7 the government's direct case, to wit, the statement
8 that Mr. Baron had nothing to do with the conspiracy
9 or the events.

10 MR. WASHOR: Before you go on - -

11 THE COURT: Wait just a minute.

12 MR. WASHOR: I am sorry.

13 MR. BERGMAN: What I believe Mr. Washor
14 is referring to right now is a statement made by
15 Mr. Nestor Vowterias at his arrest - - and I am
16 looking for it now, your Honor - -

17 THE COURT: You say the government's case
18 will show that Baron was not a part of the
19 conspiracy?

20 MR. BERGMAN: Well, it will contain
21 evidence of a statement made both by Nicholas
22 and Nestor Vowterias at the last meeting on
23 December 27th that Mr. Baron had nothing to do
24 with it.

25 THE COURT: Yes.

1
2 MR. BERGMAN: That of course is a
3 problem that the government will have to
4 confront in convincing the jury that Mr. Baron
5 is guilty. But nevertheless the fact that
6 Mr. Nestor Vowterras says the same thing after
7 he is arrested is simply cumulative of that.

8 THE COURT: You may have a problem there.

9 MR. WASHOR: Your Honor, again for the
10 record I indicate that I do not believe that
11 this is cumulative testimony. The fact that it
12 is said by the same party at different times
13 does not make it cumulative. It may well go to
14 the truth of the statement, the conditions under
15 which it is said.

16 THE COURT: All right. Well, let's wait
17 until we get to the statement then.

18 I would like to have the Vowterras
19 defendants and Mr. Lewis review the 3500 material
20 and report to me whether there is any problem of
21 joint representation.

22 It is a serious matter. The Court of
23 Appeals seems to say that I should question the
24 client.

25 MR. LEWIS: I am not contradicting your

1
2 Honor as to questioning my client. I want
3 to take up the suggestion of your Honor to
4 review the material furnished by Mr. Bergman
5 and come to a further decision.

6 THE COURT: All right. How long do you
7 need for that?

8 MR. LEWIS: I would suggest a half an hour.

9 THE COURT: That clock is fast. Let us
10 assume twenty minutes of one real time.

11 MR. BERGMAN: Thank you, your Honor.

12 THE COURT: That will give you a little
13 more time.

14
15 * * *
16
17
18
19
20
21
22
23
24
25

EXHIBITSGOVERNMENT'SPAGE

3500-2	Red folder containing within the audit file of Kenneth M. Cooley in connection with his audit of the Argo Compressor Service Corp.	19
3500-3	Tax return for Argo Compressor Service Corp. for the fiscal year ending Sept. 30, 1971.	20
3500-4	Summary transcripts of tapes prepared by Mr. Cooley	20
3500-5	2-page document written by Mr. Cooley dated Dec. 21, 1972	22
3500-6	Grand jury testimony of Kenneth Cooley.	22
3500-7	Single page document with writing on both sides prepared by Mr. Cooley.	22
3500-8	2-page affidavit prepared by Mr. Cooley on Oct. 12 and executed on Oct. 13, 1972.	23

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA :

-against- :

MURRAY BARON, : 73 CR 583
NICHOLAS VOWTERAS,
NESTOR VOWTERAS, :

Defendants. :

-----x

United States Courthouse
Brooklyn, New York

November 27, 1973
12:00 noon

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

Appearances:

EDWARD J. BOYD V, ESQ.
United States Attorney
for the Eastern District of New York

BY: PAUL BERGMAN, ESQ.
Assistant United States Attorney

MICHAEL WASHOR, ESQ.
Attorney for Murray Baron

BENJAMIN LEWIS, ESQ.
-and-

DAVID KITZER, ESQ.
Attorneys for Vowteras Brothers

- - -

1 THE COURT: Mr. Lewis, what have you with
2 respect to the examination of the material?

3 MR. LEWIS: We spent the last 35 minutes in
4 conference on the subject of possible conflict. We
5 reviewed everything here and reviewed some of our
6 other problems and I asked my clients, and they want
7 me to represent both.

8 THE COURT: Let me speak with them a few
9 minutes if they will come forward, please.

10 Now, which is --

11 DEFENDANT NICHOLAS VOWTERAS: I am Nicholas.

12 THE COURT: Mr. Nicholas, do you concur with
13 Mr. Lewis that you have reviewed the material that is
14 likely to be produced and you want him to represent
15 both you and your brother?

16 DEFENDANT NICHOLAS VOWTERAS: Yes, I do, your
17 Honor.

18 THE COURT: Do you believe that you and your
19 brother each knew about all the activities?

20 DEFENDANT NICHOLAS VOWTERAS: Yes, I do.

21 THE COURT: And you do not disapprove or
22 disassociate yourself from anything he was doing?

23 DEFENDANT NICHOLAS VOWTERAS: Yes, your Honor.

24 MR. LEWIS: Approval and disapproval at times --
25 if an act is done and it is two brothers, approval

1 could be by not doing anything about it and disapproval
2 could be a mental state of mind as well. It's hard to
3 say it was approved -- in that sense the answer should
4 be qualified.

5 THE COURT: Is there anything that your brother
6 did that you say should not be considered as evidence
7 against you and you would want a jury to treat as being
8 done on his own and without your accepting responsi-
9 bility for it?

10 DEFENDANT NICHOLAS VOWTERAS: I don't know how
11 to answer that. I am not that up on the law. I know
12 we are both in this together. We want to stick
13 together.

14 DEFENDANT NESTOR VOWTERAS: We have been in
15 business 33 years together and got along all our lives
16 together. That is our decision, to go all the way
17 with the good Lord.

18 THE COURT: You are Mr. Nestor Vowteras?

19 DEFENDANT NESTOR VOWTERAS: Yes.

20 THE COURT: It is your position that if there
21 is a verdict you consent to have it go against you
22 both as guilty or both not guilty and not making
23 any separate defense?

24 DEFENDANT NESTOR VOWTERAS: That is what our
25 position is, to go along with it.

1 THE COURT: It is a serious matter involved.
2 I don't know what my sentence would be if there is a
3 finding of guilty, but the conspiracy count under 371
4 could carry a five-year imprisonment and \$10,000 fine,
5 and the bribery counts could each carry imprisonments
6 of up to 15 years or \$20,000 in fines. They are
7 serious matters.

8 DEFENDANT NESTOR VOWTERAS: We realize that,
9 your Honor.

10 DEFENDANT NICHOLAS VOWTERAS: Yes, your Honor.

11 THE COURT: Is there anything that either of
12 you has kept back from your brother or your attorney
13 because you think --

14 DEFENDANT NESTOR VOWTERAS: We told our attorney
15 everything.

16 THE COURT: Because you don't want anybody --

17 DEFENDANT NESTOR VOWTERAS: I haven't kept
18 anything back.

19 THE COURT: Mr. Nicholas?

20 DEFENDANT NICHOLAS VOWTERAS: No, your Honor.

21 THE COURT: Mr. Bergman, I am not sure without
22 going into all the details of the defense how much
23 more of a hearing I could conduct.

24 MR. BERGMAN: What I would suggest, if you feel
25 it is appropriate, for your Honor to conduct an in

A 55

1 camera investigation in your chambers with their
2 attorneys and I prefer to have that record sealed and
3 if the question is raised on appeal there could be a
4 record.

5 In an in camera hearing you could have a wide
6 range of inquiry.

7 THE COURT: I might ask a few questions about
8 the September meeting where only one of them seems to
9 be present.

10 MR. BERGMAN: There is one matter I don't want
11 your Honor to inquire into in front of me, ask
12 Mr. Nicholas whether he approved of the conduct of his
13 brother Nestor. I suppose the question might be asked
14 of Mr. Nestor whether he approved of the conduct of
15 Nicholas, because there are explicit overtures made
16 in the November 29th meeting just as between the
17 revenue agent and --

18 MR. LEWIS: I join with Mr. Bergman in that
19 in camera inquiry.

20 THE COURT: Let me exclude everybody else from
21 the courtroom. I have a request for reading of
22 testimony in the case that is on trial which may
23 begin around 1:30. So it will probably be 2:30
24 before we are ready to pick a jury in this case.

25 MR. BERGMAN: Does your Honor wish me to supply

1 your Honor with any material that might be helpful?

2 THE COURT: Let me look at the 3500 material.

3 MR. BERGMAN: It may be easier to look at the
4 3500 --

5 MR. LEWIS: I can make my copy available.

6 THE COURT: I can ask Mr. Bergman and Mr. Washor
7 and everyone else in the courtroom to leave.

8 MR. BERGMAN: I also have a copy of the tran-
9 script --

10 MR. WASHOR: May I for the record note my objec-
11 tion to being excluded on this application.

12 THE COURT: Well, I had your position as to the
13 things you may be concerned about and I will have that
14 in mind. I think this relates to the position of the
15 two defendants separately.

16 MR. WASHOR: The problem we have is the
17 Government makes them co-conspirators. We have a
18 right to be privy with any act or conduct that in some
19 manner or form may be binding on the defendant Baron
20 that would be discussed.

21 THE COURT: I have your point but since this
22 will be sealed, it will relate to the rights of the
23 two defendants. I am going to seal the record.

24 MR. WASHOR: Will the Court advise counsel so
25 that an appropriate record can be made whether or not

1 there is a definite position as to who will be
2 testifying, either of the defendants Vowteras, or which
3 of the two would not be testifying so that the record
4 is clear as to our right of confrontation?

5 THE COURT: Of course the decision to testify
6 is to be made at the conclusion of the Government's
7 case by the individuals. I may inquire what the pre-
8 sent intention is for my private information.

9 MR. WASHOR: If the intention presently is that
10 any one of the two Vowteras would not testify, even
11 though subject to change, I would ask I be so informed.

12 THE COURT: I am going to pass on that after-
13 wards.

14 MR. LEWIS: I oppose the objection on the
15 grounds the hearing is to ascertain for the Court's
16 benefit whether or not it is appropriate to go forward
17 with one counsel. It doesn't apply to any strategy
18 or calling the defendants as witnesses or not.

19 THE COURT: That has some bearing on it. But
20 I think if this is an in camera hearing it should be
21 only for my purpose in determining whether I am
22 running an undue risk.

23 MR. BERGMAN: Your Honor, this is the transcript
24 of the 13 separate conversations which the Government
25 will be introducing by the tapes. This is a complete

1 set of 3500 material. The numbering on those tran-
2 scripts -- all those with the prefix 1, B, C, D, are
3 November 29th. All those beginning with 2, 2-A, 2-B,
4 C, D, are December 21st. And the final index, 3-A and
5 B are for the last meeting on the 27th.

6 THE COURT: In the meanwhile let me say this
7 with respect to the personnel files which I have looked
8 at, it appears Mr. Cooley was employed July 1, 1971
9 for a one-year probationary period. He received a
10 probation from Grade 7 to Grade 9 effective July 9,
11 '72, then he received a promotion from Grade 9 to
12 Grade 11, effective July 2, 1973. I don't think every-
13 thing in there is material. There was a reference
14 to having been instrumental in the arrest of corrupt
15 taxpayers in one of the largest cases in the district.
16 If that is this case, it seems to me something the
17 defendants should be able to use in cross-examination.

18 MR. BERGMAN: I might mention that Mr. Cooley
19 is now a trainee Special Agent for the Intelligence
20 Division. He is no longer with the Auditing Division.

21 MR. WASHOR: Will that be made available to us?

22 THE COURT: I told you the facts, I don't think
23 I am going to go into the rest of the file.

24 I think Mr. Bergman should be ready to state
25 whether it is this case or a different case described

A 59

1 here.

2 MR. BERGMAN: I am almost certain it is this
3 case. The only thing about the personnel files, and
4 this may go to the rest of the question, is that
5 Mr. Cooley had never seen this personnel file and he
6 does not know of that comment in there. I suppose
7 the line of inquiry ought not to refer to the personnel
8 file. Generally speaking, whether or not he had any
9 expectation of reward, benefit, or any such thing as
10 a result of his activities --

11 THE COURT: When it comes to testimony as to
12 receiving a promotion, I think it is relevant.

13 MR. BERGMAN: All right.

14 MR. WASHOR: I would be concerned with the
15 exact language that may have been paraphrased in
16 relating this information to us so that a proper legal
17 question --

18 THE COURT: We will get to that at a later time.

19 Please, everybody leave the courtroom now so
20 that I can spend a little time with the two Vowteras
21 Brothers and their lawyers.

22 (Courtroom cleared.)

23 (At this time an in camera hearing was held.)

24 - - -
25



A 60



Inspection Report Sheet

On February 6, 1973, Nestor Vowteras was arrested at his residence, 2185 Lemoine Avenue, Fort Lee, New Jersey by Inspectors Louis P. Trombacco and William Watson for violation of Title 18, U.S.C. 201 (b) (1) and 2 in connection with the bribe given to Internal Revenue Agent Kenneth Cooley on December 21 and 27, 1972. Trombacco stated that when Vowteras was told that he was being arrested for giving \$15,000 to Internal Revenue Agent Cooley, he stated, "Oh my whole life is ruined". Vowteras was then advised of his Constitutional Rights as set forth in Document 5661 (Rev 11-66). Trombacco stated that Vowteras indicated he understood his rights.

Trombacco also stated that Vowteras was later asked whether anyone else was involved in the bribe; and that Vowteras had replied that he was the only one involved.

On February 6, 1973, Nestor Vowteras was interviewed at the Offices of the United States Attorney, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, by the reporting Inspector in the presence of Inspectors Louis Trombacco and William Watson regarding the monies Vowteras gave to Internal Revenue Agent Kenneth Cooley in connection with the audit of the Argo Compressor Service Corporation return.

Vowteras stated that Internal Revenue Agent Cooley first visited Argo sometime in October 1972 at which time he, his brother Nicholas, Murray Baron and Cooley discussed commissions and travel expense; that there was no discussion of a bribe at this meeting; that when Cooley returned in November 1972 to continue the audit, Cooley met with him, Nicholas and Baron, but that he left before the meeting ended because of an appointment in New York; and that nothing much was accomplished during the November meeting because Nicholas could not answer most of the questions raised by Cooley.

Vowteras further stated that Cooley returned to Argo on December 21, 1972 to continue the audit; that on this occasion Cooley met with him and Baron; and that in the morning the audit proceeded routinely. Vowteras stated that Cooley and Baron went to lunch together; that he did not know what occurred between them during lunch, but that after they returned to Argo, Baron called him (Nestor) over to the coffee machine and asked him for \$500; that he did not ask Baron the purpose of the request because he assumed Baron wanted the money to give to Cooley; and that he was not

(Con't)

Case Title	Case Number	Type of Investigation
VOWTERAS, Nestor	401-0173-0024	Bribery
Investigation at	Inspector Making Report	
Fort Lee, New Jersey	Lewis E. Rosenbluth	

Inspection Report Sheet

Internal Revenue Service

11

Form 2028-M (5-70)

certain if he gave the \$500 to Baron or if he (Nestor) stuffed the \$500 into a liquor carton. However, at this point, Vowter was again stated that he recalled putting money into a liquor carton.

Vowter was then told that he had indicated to Cooley during the December 21, 1972 meeting that Baron had put \$500, which he had given Baron into a liquor carton for Cooley. Vowter was stated that if that was what he said, it must have happened that way. Vowter was again asked to recall what happened with respect to the \$500 and the liquor carton. Vowter replied that his memory was not clear, but that he remembered counting money near or stuffing money into a liquor carton; and that he may have put \$4,500 which he obtained from his bank into the liquor carton.

Vowter was stated that at one point during this meeting, Cooley pointed to a figure 5 on a desk pad and asked him what it meant; that he replied that he did not know and then placed the numeral 1 in front of the 5; and that at this point he did not know if he meant 1,500 or 15,000, but that when Cooley questioned the figure he thought Cooley was indicating that 1,500 was not enough. Vowter was stated that he indicated to Cooley that he would give him \$5,000 that day and \$10,000 at a later date; and that after obtaining cash at his bank, he gave Cooley \$4,500 to supplement the \$500 which was already in the liquor carton. Vowter was stated that the money was given to Cooley to conduct a favorable audit.

Vowter was further stated that Cooley returned to Argo on December 27, 1972 in connection with the audit; and that on this occasion he paid him an additional \$10,000 for the same purpose. Vowter was also stated that his brother, Nicholas, did not know about or have anything to do with the bribe.

Vowter was stated that he had been visiting a psychiatrist, Dr. Weitzen, 55 East 80th Street, New York, New York "off and on" during the past nine years; that on Cooley's first visit to Argo, Cooley talked about his house and how difficult it was to manage; that even though Cooley did nothing wrong, he felt Cooley was looking for something; and that not knowing what to do he became depressed. Vowter was stated that during the three month period of the audit, he asked several people what he should do; and that they all had indicated to him that he should not "pay off" Cooley. Vowter was stated that the matter was bothering him so he visited Dr. Weitzen; and that he did not recall if he told Weitzen about his concern over whether or not to pay off Cooley, but that if he did tell Weitzen, Weitzen did not offer advice because all Weitzen ever does is "listen" to his problems.

(Con't)

Re: VOWTERAS, Nestor
401-0173-0024

A 62

On February 6, 1973 Nestor Vowterras appeared before United States Magistrate Vincent Cutoggio at the United States Courthouse, Eastern District of New York and was released on a \$10,000 personal recognizance bond.

Re: VOWTERAS, Nestor
401-0173-0024



Inspection Report Sheet

A

63

On February 6, 1973, Nestor VOWTERAS made admissions of guilt to Assistant United States Attorney Edward J. Boyd concerning the payment of a bribe to Internal Revenue Agent Cooley. VOWTERAS was interviewed by Boyd at the Office of the United States Attorney, Eastern District of New York.

Case Title	Case Number	Type of Investigation
VOWTERAS, Nestor	401-0173-0024	Bribery
Investigation at	Inspector Making Report	
Brooklyn, New York	Lewis E. Rosenbluth	

Inspection Report Sheet
Internal Revenue Service



Inspection Report Sheet

A 64

On February 6, 1973, Murray Baron was arrested at his residence, 34 South Parker Drive, Monsey, New York by Inspector James Diercksen assisted by Inspectors John Lavelle and William Fenwick. Baron was advised that he had the right to remain silent; that anything he said could be used against him in court or other proceedings; that he had the right to consult an attorney before making any statement or answering any questions; and that if he decided to answer any questions he could stop the questioning at any time. Baron stated that he understood his rights. Baron was asked by Inspector Diercksen whether he paid five hundred dollars to Revenue Agent Kenneth Cooley on December 21, 1972. Baron stated that he had not. He was asked by Inspector Diercksen whether he had given Revenue Agent Cooley a bottle of liquor contained in a carton on that date. Baron stated that he had picked up a bottle of liquor contained in a carton that was on the floor in the room where he was conducting the audit with Revenue Agent Cooley; that he gave the carton of liquor, which belonged to the Vowterras brothers, to Nestor Vowterras; that at this point he left the room and that Nestor Vowterras must have given the carton of liquor to Revenue Agent Cooley. Baron denied any knowledge that five hundred dollars was contained in the carton of liquor. He denied any knowledge whatsoever of a bribe being paid to Revenue Agent Cooley. Baron was asked by Inspector Diercksen whether he told Revenue Agent Cooley that he would not stand in his way if Revenue Agent Cooley wanted to work a deal with the Vowterras brothers. Baron admitted making this statement but denied that he knew, in fact, that the Vowterras brothers paid any bribe to Revenue Agent Cooley. He denied specifically that he had any knowledge that the Vowterras brothers paid Revenue Agent Cooley \$15,000 for a favorable audit. Baron stated that he was present during the meeting (Baron was not sure of the date) when Nicholas Vowterras offered Cooley a compressor. Baron further stated that Nicholas Vowterras told him that he was going to send Revenue Agent Cooley a turkey. Baron stated that he advised Vowterras not to send it because "you could get the kid in trouble". Baron denied any wrongdoing on his part in the audit of Argo Compressor Service and stated that if a bribe was paid the bribe was paid by the Vowterras brothers.

On February 6, 1973, Baron appeared before United States Magistrate Vincent Cutogio, Eastern District of New York and was released on a \$5,000 personal recognizance bond.

Case Title	Case Number	Type of Investigation
VOWTERAS, Nestor	401-0173-0024	Bribery
Investigation at	Inspector Making Report	
Monsey, New York	John Lavelle	

Inspection Report Sheet

15

Internal Revenue Service

Form 2020-M (5-70)



Inspection Report Sheet

A 65

On February 6, 1973, Murray Baron was arrested at his residence, 34 South Parker Drive, Monsey, New York by Inspector James Diercksen for violation of Title 18, U.S.C. 201(b) (1) and 2 in connection with the bribe given to Internal Revenue Agent Kenneth Cooley on December 21 and 27, 1972. Baron was advised of his constitutional rights as set forth in Document 5661 (Rev. 11-66).

Baron was interviewed by the reporting Inspector on February 6, 1973, in the presence of Inspectors James Diercksen and William Fenwick, at the Offices of the United States Attorney, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York. In addition to the statements made earlier to Inspectors James Diercksen, John Lavelle and William Fenwick, Baron stated to the reporting Inspector that he had not shown Cooley a piece of paper with 5000 written on it and had not written 5 on a desk pad or blotter and then circled the 5 during the audit meeting on December 21, 1972 at the Argo Compressor Service Corp. Baron further stated that when he indicated to Cooley during the audit that the taxpayers would show their appreciation, he meant they would show their appreciation to him (Baron) because he was able to have an issue settled in their favor.

Case Title	Case Number	Type of Investigation
VOWTERAS, Nestor	401-0173-0024	Bribery
Investigation at	Inspector Making Report	
Monsey, New York	Lewis E. Rosenbluth	

Inspection Report Sheet
Internal Revenue Service

16



Inspection Report Sheet

A 66

On February 6, 1973, Nicholas Vowter was arrested at his residence, 195 East Carpenter Street, Valley Stream, New York by the reporting Inspector and Inspector Joseph Greco for violation of Title 18, U.S.C. 201(b) (1) and 2 in connection with the bribe given to Internal Revenue Agent Kenneth Cooley on December 21 and 27, 1972. Vowter was advised of his constitutional rights as set forth in Document 5661 (Rev. 11-66). Vowter stated he understood his rights.

While waiting to be processed Vowter stated to the reporting Inspector that "we got some bad advice". Vowter would not say what he meant by this statement. Inspector Greco informed the reporting Inspector that Vowter made the same statement to him.

On February 6, 1973 Nicholas Vowter appeared before United States Magistrate Max Schiffman, at the United States Courthouse, Eastern District of New York and was released on a \$10000 personal recognizance bond.

Case Title	Case Number	Type of Investigation
VOWTERAS, Nestor	401-0173-0024	Bribery
Investigation at	Inspector Making Report	
Valley Stream, New York	Lewis E. Rosenbluth	

EJB:PBB:lag
F.#731,151

A 67

August 23, 1973

Benjamin Lewis, Esq.
166-26 89th Avenue
Jamaica, New York 11432

Re: United States v. Nicholas Vowteras
and Nestor Vowteras, et al.
Criminal Docket No. 73 CR 583

Dear Mr. Lewis:

In response to your letter of June 26, 1973, enclosed herewith please find copies of the draft transcripts of portions of the conversations recorded in the above-captioned matter. Those transcripts are not full transcripts of all the conversations which were recorded. At our mutual convenience, the tapes of those conversations will be made available to you for the purpose of your listening to them.

I have enclosed herewith the copies of the investigative reports which relate to those statements made by your clients following their arrest. In the event that you wish to interview the agents who arrested your clients, a mutually convenient time will be arranged for such interview.

I have not fully resolved in my own mind whether to make available any information regarding Agent Cooley's prior service with the United States Government. I will advise you of the Government's position at a later date.

Very truly yours,

ROBERT A. MORSE
United States Attorney

Paul B. Bergman
Assistant U. S. Attorney

(HAND DELIVERED)

Enclosures

A 68

Official record of Exhibits offered and entered

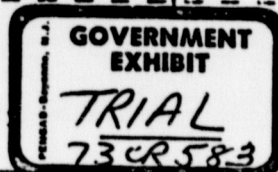
Before Judge: *Judd, J.*

File Number:

Date: *Nov. 27**73 CR 583*USA Plaintiff
v/s*Baer et al*
Defendant*Paul Bergman* Attorney
Michael Washel
Benjamin Lewis Attorney
Kitzes

v/s

3 rd. Party D



Attorney

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
<i>Nov. 27</i>	<i>116v. 37</i>		
	<i>Manuscript 11/4</i>	<i>1</i>	
	<i>7pg Report</i>	<i>3500-1</i>	
	<i>Folder - audit file</i>	<i>3500-2</i>	
	<i>Harbort's dtd 1971 -</i>	<i>3500-3</i>	
	<i>Summary transcript of tapes -</i>	<i>3500-4</i>	
	<i>4pg doc. Corley 11/21/72</i>	<i>3500-5</i>	
	<i>4pg Corley 7pgs. 6/7/73</i>	<i>3500-6</i>	
	<i>1pg doc. Harbor 10/1/72</i>	<i>3500-7</i>	
	<i>4pg affidavit Corley 1/4/73</i>	<i>3500-8</i>	
<i>Nov 28</i>	<i>Nov 28</i>		
<i>Kenneth Corley</i>	<i>4pg personal file</i>	<i>3500-9</i>	
<i>Corley</i>	<i>1pg letter to (Harbor) 11/1/72</i>	<i>X</i>	<i>2</i>
<i>Baer</i>	<i>3pgs 10/1/72</i>	<i>7A, 7B, 7C</i>	

7	Cooley if/2 - dpts	X	3
	" if/2 - dpts	X	4
	" if/2 - dpts	X	5
	" if/2 - dpts	X	6
	Telephone 12/13		7
	4. Telephone 12/13	X	8-11
	Telephone 12/13	X	12
	Telephone 12/13	X	13
	Telephone 12/13	X	14
	Notes 12/13	X	14A
	Conversations 14	X	15
	Signature		15A
	Income Tax Return	X	16
	File + contents - forms with papers	17	
	Income tax audit check, as 2995	TTR	17A

November 29, 1972 Transcribed Conversation
Number 1

COOLEY: All right, so basically you know that most of it is cash, and, eh, you know my position, without anything to back it up, I can't do anything with it. Also, eh, you know that, you know.

NICHOLAS: ...(inaudible)...

COOLEY: You tell me. I,...we run into the situation of, eh, cash items. You're an 1120. You know what I'm talking about. Huh? I mean, the fact is, you take a check for, eh, \$2800 to cash and you or your brother sign it.

NICHOLAS: Right, that's right.

COOLEY: As far as we're concerned, not only is it not a deduction for the corporation, but it's yours.

NICHOLAS: Yeah. Well, I imagine you, eh, I can see what...(inaudible)...

COOLEY: It's not what I feel. That's what I have to do.

NICHOLAS: Yeah.

COOLEY: It becomes a dividend although you didn't declare it. So, it becomes taxable as additional income on the corporation and it becomes taxable as income to you... The majority of it is cash and, eh, I see it now. We did the whole year and, eh, there's a few items that aren't. But if it amounts to, eh, \$3000, it's a lot... Nick, can I see the bank records on that Christmas club? 'Cause if you say these are deposits, what do you do with the ...(inaudible)... on them?

BARON: I don't know what the, I don't know what the ...(inaudible)...

COOLEY: Yeah. What happens when the, at the, eh, Christmas time of year? You withdraw it and make a list of who gets the money or is this, eh, you withdraw it?

BARON: That's actually ...(inaudible)...Christmas club...(inaudible)...

NICHOLAS: Right.

BARON: In other words, instead of, eh, eh, distributing it through the year, accumulate it...(inaudible)...

COOLEY: Is this for employees? Is it for employees?

NICHOLAS: Employees, gifts and all that stuff, you know.

COOLEY: Do you list it?

NICHOLAS: Huh?

COOLEY: Do you list it? You know who gets what? If you get \$3000.

NICHOLAS: I don't know...

BARON: ...(inaudible)...

NICHOLAS: I tell you, eh, its not easy doing business and I know, eh, I can see your position...(inaudible)...

COOLEY: Well, it's not my position, it's my job.

NICHOLAS: Look, eh, whatever you can do for me I'd appreciate, because I tell ya, I'm working like hell to tryin' get this place straightened out. This is an area I'm trying to find out. How do we handle this situation here? How the hell do we handle it? How do you do it? I mean a man, they won't accept a check, number one. They don't want gifts, number two. So, they want cash. Now how do you do it? See, you got the point.

COOLEY: Well, you see what I'd like to do for you...(inaudible)...

NICHOLAS: Well, whatever you please, listen, eh, Kenneth. Whatever you can do for me, I'd really appreciate.

COOLEY: What would you like me to do?

NICHOLAS: Anything you could do for us, I don't know, it's up to you. Eh, eh, I don't know what to say. I'm, I break my ass here to try to keep the place goin', keep all these people workin'. I'm in here everyday. I'm sixty one years old, right. I worked thirty, forty four years tryin' to get to this point, and I'm up to here with problems and everything else. So, eh, I don't know what to say. Eh, eh, I'd like to work with you if there's anyway. I don't know. I've always been a hard worker all my life and that's all. I don't know anything about bookkeeping, accounting or anything. I think that's why I hire people who can do all this for me.

BARON: ...(inaudible)... the Christmas Club books, you know, he's referring to.

COOLEY: Uh huh. Well, you know, I don't have to see nothing unless you can tell me what happens at the end of the year with them.

NICHOLAS: I'll tell you another thing we've been doin'. I tell you it's been a little ridiculous. My brother goes overboard. So, we have a Christmas party. We spend 5000 dollars 8000 dollars besides that he gives out cash, besides...

COOLEY: What is this for employees or customers?

NICHOLAS: Eh, cust... all customers and our employees. You know we have the employees but we, we have may..., we have about, oh we had you at the party last year. We had about 125 people there. About 30 or 40 were the...(inaudible)... the girls.

BARON: That wouldn't show up on the...(inaudible)...I started to tell you about these guys, you know.

NICHOLAS: Yeah.

BARON: ...(inaudible)... who they are, you know. So...

NICHOLAS: And I take'm, and I take'm to...(inaudible)...party, give'm this. I, I gotta do it.

BARON: Lets get it over with. I just want to get my envelope and get out of here. That's how, you know.

NICHOLAS: Ken, I'm sayin', Jesus, eh, it's not easy. Eh, I'm tryin' to do things right here and I've always been honest all my life and I'm tryin' to get the things straightened out, but I can't, and, uh,... I know...what can I say, see I'd love to... I don't know what to say... It's not easy because I tell ya, I got Joy on my back.

BARON: ...(inaudible)...

COOLEY: Yeah, sure.

BARON: ...(inaudible)...

COOLEY: ...(inaudible)... well. I'll have to verify payment, but that's just looking at the checks. I need the basis for the payment, actuary bills or whatever.

BARON: Yeah obviously, obviously they're not reporting it. I'll, I'll I'll con, concede that, but, you see you're making a, a, a, a, a two... See, you seem to agree with us that we, we are paying these expenses, but you're making a second requirement that we prove not only you, the regulations...(inaudible)...

COOLEY: You don't have to do anything in regards to them except show it to them as income.

NICHOLAS: Well you see I couldn't do that, unfortunately. It would hurt my conscience because these guys would probably be out of a job.

COOLEY: But then...

NICHOLAS: Take the guy from UPS, eh Avis, or yeah, because...(inaudible)...

BARON: Now, now, now...(inaudible)...Nick is, is that he would never give you business any other way.

NICHOLAS: I know what I'm up to, I'm up, I either have to decide you don't give him the name and my conscience because I committed myself to these people. Nobody, eh, nobody knows.

COOLEY: But then it comes to the point you either have to decide that yuh

NICHOLAS: Well, now I know...

COOLEY: ...you're not going to deduct it or, eh,...

NICHOLAS: ...right...

COOLEY: ...you're not going to pay it.

NICHOLAS: I know...Jeezz, I tell you, eh,... (inaudible)...

BARON: Well look Mr. Cooley, you know. Look I, I, I, I want you to make this you know, up on the information that you have, whatever it is. You know, if there's some way that you can, you know, open your mind up a little bit, we would show our appreciation. I don't want to effect your thinking on this point,...but, but... and I'm sure you you're thinking the way we are, it's just that the regulations or whatever it is are holding you back or something.

COOLEY: Well...

BARON: ... a little more open with us about it you know.

COOLEY: Well, you know, basically I have a job that I'm doing.

BARON: But the job has some discretion. You could give us a little bit of an allowance on this.

NICHOLAS: What are we, eh, talking about here?

BARON: Well he's talking of big money...(inaudible)...

COOLEY: Well what I said before you know, you want a petty cash allowance? Well how would it do if I went as high as \$25 a week? Would that overwhelm you?

BARON: Ha, ha, ha, ha, eh, huh, huh. Maybe \$25 a day.

COOLEY: This is the kind of discretion that they allow me.

NICHOLAS: Boy I tell you. Is that the figure there? Jesus I tell, I don't know where the hell I'll get it to, to...(inaudible)...

BARON: I don't know maybe...

NICHOLAS: I'm struggling right now to straighten it up.

BARON: ...Maybe Nestor would have some more names. He knows all this ... (inaudible)...

NICHOLAS: I know but I tell you it's I, I, it's eh, I'd love to give him the names 'cause I can't afford to pay this kind of money, but Jesus Christ, I tell you.

BARON: He's got a good memory. He remembers.

NICHOLAS: Oh I remember names too. I'm not sayin' I'm not rememberin' the names. I'm not sayin' I'm not rememberin' the names. I can go and I can pick out a hundred, two hundred of these people that I go to. But I can't, eh, I couldn't do it. I'd lose them for sure plus they'd probably lose their jobs too. Meantime, we're talkin' about money here that I don't know, I can't afford. What am I supposed to do?

BARON: ... (inaudible) ... cash disbursements...

NICHOLAS: Oh but he's only one of the many, I mean one of the many. I've been in business so many years. I, they know me with the tool... (inaudible). They call me up after thirty, forty years. They, Nick this and Nick that, you know. It's a relationship but, eh, then you say all right. You throw them a few bucks here and a few bucks... (inaudible)... Jesus, I tell you, I wish you could do something for me. Eh, eh, I can't afford anything like this.

COOLEY: Well you tell me what you'd like me to do.

NICHOLAS: Well listen, listen.

BARON: Meet us half way.

NICHOLAS: Jesus,...

COOLEY: Based on what? You know how...

BARON: Look you could put it down, if it doesn't pass review then we'll fight it.

NICHOLAS: Listen I tell you what...(inaudible)...

BARON: In, in your, in your judgement you feel that a eh, eh, eh 20,000 was not substantiated. If it doesn't pass review, then, then, we'll, we'll take it from there, but at least you'll, you'll give us a break, give us some opportunity.

COOLEY: Yeah but why, why am I giving you a break? I mean from my point of view I'm doing my job the right way. Right?

BARON: Look tell me this. Do you honestly feel that all of this money went into their pockets?

COOLEY: What good does it do, as I said before, if I honestly believe that every cent of it was, was paid out? What I said to you before, what good does it do if I think that you spent 20,000 more than that?

NICHOLAS: Murray, he has a eh,... I can... Mr. Cooley has a good point and I can see his point.

BARON: Look, look, look. You're allowed to use your judgement on this line. Some discretion.

NICHOLAS: Yeah.

COOLEY: Judgement in what kind of area?

BARON: On an area like this where it's not all black and white. You have your...(inaudible)...

COOLEY: You've got cash payouts.

BARON: Certainly, yeah...no, no...

COOLEY: For who, for what.

NICHOLAS: (Inaudible)...all right, I'll call him back in the morning.

COOLEY: This, this becomes almost like T & E. You gotta have, you gotta meet record keeping requirements. And record keeping requirements are pretty stiff. At least if you have some kind of records.

NICHOLAS: Well Murray, I'll do anything.

BARON: Ne-...Nestor knows the ...(inaudible)... who they are.

NICHOLAS: I know, but listen. I'm gonna tell you this. Nestor knows all the names. I know all the names. But the point is this. We can't,... money's goin' down now and, eh, how, I can't get it back. I can't put these guys on the spot...(inaudible)...

BARON: Supposin', supposin' if we told them...(inaudible)....

NICHOLAS: Give a, gee, a very good instrument. Let's be honest. UPS. We do, Jesus, eh, a thousand dollars a month with them. Twelve thousand dollars a year. This guy, if something happens where they get his name, this guys out of a job. The new guy, I'll never be able to touch him. They'll black ball us. They'll black ball us. And gee, I can't depend on it, I got too many people workin' here, eh, I tell you. It's, it's very, eh... I don't know what to say. I'd love, anything I can work, if I can work, anything, I don't give a shit what it is but, eh...

COOLEY: Well, you tell me what you mean.

NICHOLAS: Jesus, it's worth anything to me to do, anything, I tell you. I can't afford to, eh, pay this kind of money out. I had to start because, you know, I never saw these figures with...

BARON: Well, Mr. Cooley, isn't it, eh you know, you come in, you get an impression of a place, right? You worked with me...(inaudible)... impression of a place...(inaudible)... You know how they run. So based on that aren't you allowed to exercise some judgement to say, eh, look I feel that, eh, this is what they, eh, look, look that they, they must, eh, spend some money in order to, you know, eh, produce this kind of sales, sales volume...(inaudible)... You know, we don't have a country club. We don't have a yacht. We don't have any ...(inaudible)...

NICHOLAS: Eh, eh, I got a plain old house in Vally Stream.

BARON: Eh, you know, you can, you can judge the kind of guys that are hidin'...(inaudible)... and a guy like him, eh.

COOLEY: How can I judge?

BARON: I, I don't know. I, I, it just seems to me that maybe you can make some impressions the two times you've been in here.

COOLEY: All right, but impressions and, eh...

NICOLAS: It doesn't mean anything.

COOLEY: You know...

BARON: Listen, you have no discretion at all to, to, to give us a break on something like, uh, this area?

COOLEY: Well I actually have to write down something like, eh, accepted \$20,000 as reasonable, or well eh, no one knows who the cash was paid to. You know I, I'm doin'...

BARON: I thought, I, I thought, you'd disallow \$20,000 and give us the difference.

COOLEY: You know I'm writing down something that, eh, you know, some reviewer is going to think is just fiction.

BARON: Yeah, look. I want to ask you as an accountant...(inaudible)... course right? You've been doing your testing and everything else, right?

COOLEY: Right.

BARON: Except in this area, everything else is legitimate, right? There's been no...(inaudible)...

COOLEY: Well, I may have...

BARON: No, I, I think so far, right? I'm not being, eh. This is the first area.

COOLEY: I'm not, you know, I don't make any inferences on that. I'm not a certified accountant. I'm not, eh...

BARON: I know, but you're...(inaudible)...

COOLEY: I'm not, eh, all right, but I'm not doing a hundred percent of anything.

BARON: ...(inaudible)...based on the testing you've done so far.

COOLEY: I don't. Yeah, based on the testing I, I've done, I satisfied myself but I don't know if, I don't know if I missed the boat, do I?

BARON: Well if that's what's happening then, if you tested...(inaudible)..., right?...(inaudible)...you're doing should be a good representation.

COOLEY: Well sometimes...(inaudible)...sometimes I thing...(inaudible)...

NICHOLAS: ...(inaudible)...big factor. Listen, like in my business, I could find a million things wrong here, everybody. There's no one that's perfect. Eh, people run their businesses different ways. You know, there are a million guys that have tried it on the outside, have this yacht. I know people that go to Florida with, eh, they have thousands of dollars to throw away. Me, I go there with my lousy twenty, fifty dollars in my pocket. Because I'm tight here. I am tight. And then to come, you know, and after all that, I figure I'm doin' the business, I got people that I work with and all that. But then to get hit with something like this here, Jesus, I don't know, eh, what to say eh I, I'd love to work anything out with you that I could, I don't care what it is...(inaudible)...

COOLEY: Well you tell me what you mean. You know you're making...

NICHOLAS: I don't want to put myself on the spot. I tell you, listen eh, I don't know how to handle a situation like this.

BARON: Can't you just...(inaudible)...balance sheet...(inaudible)...accounts receivable books. Go up.

COOLEY: Uhm hum.

BARON: You know, but not that much. Accounts payable has gone up. Two-thirty-nine to three fifty-five-four-twenty-four. So it, eh, not doing, you know, tight. Always being at a point, eh...

COOLEY: So what does that, what does that... (inaudible)...

BARON: ...(inaudible)...they don't start counting out the business really if they're, if they're not counting cash they try to.

COOLEY: All right, the business has ended, it doesn't hurt them?

BARON: It doesn't hurt them?

COOLEY: No

BARON: ...(inaudible)...

COOLEY: All right, but I mean, you know, you're talking about, eh, theory.

BARON: You don't have that many people who went bust intentionally.

COOLEY: No not intentionally. But a lot of people, that, eh, it doesn't really it's not the end of their lives. I'm not saying anything with regard to, you know, I'm just saying their accounts payable are higher. But still, that has nothing to do with sixty thousand dollars worth of cash checks.

BARON: ...(inaudible)...

NICHOLAS: I think what Murrays tryin' to,... let me...

COOLEY: He's tryin' to give me the picture.

NICHOLAS: Right, you know how things are. Everything is going up here and it has been, eh, naturally, you're concerned with only one thing. You have a job to do and I can see it, eh, after all, eh, you know you have a commitment, who you work for, but, eh, there's times in life when you have to sit back and say, look Jesus, you know, if I, you know, had money right and left to throw away sure I had the money. This is nothing but I don't have that kind of money to, eh aside from that, I'm gonna be hit with federal, I mean state tax and city tax and all this baloney here and how I know all this I'll tell you I'll be honest with you. Six years ago I had my sister in here as a bookkeeper. And, eh, her two sons were workin' with me. They went into business in competition with me. And she turned me in. She was takin' care of the books and I got screwed, right and left with her and I... (inaudible)...

BARON: ...(inaudible)...sales tax.

NICHOLAS: Right. So, I tell you, all my life that's all I'm doin'. I'm gettin' myself to a point and I'm wonderin' what the hell, you know, what the hell is, you know, left for me. Jesus, I can't eh. This is some nut for me to, eh, and I'm, I'm telling Murray I want things right. Am I right? Since you've been my accountant, I want to get the place straightened out. I want the place to go right. We got this, we got that going. Now this commissions, if

(Cont.)

NICHOLAS:

that's the case, goddamn it, I'm a, I, I, I have to either lose business or tell them they have to take a check or else. I don't know what to do, I mean, eh, Jesus, this kind a money here, Christ sakes, I can't afford this. I'm not cryin'. I wish I had it so I could say sure, no problem, we'll give 'em a check. But I don't have that kind a money. I'm way back on my bills and everything. I'm tryin' to keep the place goin' together here. And eh, I don't know how to say it, but I want to say it, but I don't know how to say it. Ha, it's worth anything to me to keep this thing going, this place going. I got another four years goin' for, 'till I retire. Sixty five. Jesus Christ, as I said, I worked forty years since I was fifteen years old. Every time I turn around, I got the place goin' nice, something comes up, something comes up. Jesus Christ, I try to do things right. So eh, I'm not trying to give you a sob story. It's just a question of this. I know I can't afford this kind of money. Where am I, the hell am I gonna get this kind of money. I owe the bank money. I got, I owe Joy money. Jesus Christ, anything I can do, eh, Murray, whatever you can work out I mean, I'd appreciate it. Jesus.

BARON:

...(inaudible)...

NICHOLAS:

But eh, Jesus, I'd like you to think it over and see what you can do for me because I tell you, this's gonna kill me, eh...

COOLEY:

Well you say think it over. What do you mean?

NICHOLAS:

I don't know how to put it. I don't I, I, honest, I don't know how to put it, eh. I honest don't know just don't know to put it. I mean, if you can do something for me, I can do something for you. I don't know how to put it. You know, Jesus, eh.

COOLEY:

You have to tell me what you mean. You know I eh, I have a job and...

NICHOLAS:

I don't wanna go to jail. That's all I can tell you. I don't wanna go to, you know. I don't have to tell you I know what eh, I know what we're talking about there now with dollars, Jesus. If there's anything you can save me, I can, what can I say.

COOLEY:

You have to say it. I can't say it.

NICHOLAS:

I know.

BARON:

Well what he means is, eh, he'll find a way to show his appreciation, if you can, you know, see your way clear to...

NICHOLAS: Right, to help me out.

COOLEY: Well...

BARON: You know we're not trying to affect your findings.

COOLEY: You're putting me on the spot. I have to keep asking you what do you mean by that.

BARON: You know what we mean. We don't have to tell you.

COOLEY: Uh...

BARON: ...I think you're...

COOLEY: What exactly do you mean?

BARON: ...grown up.

COOLEY: What exactly?

BARON: I think, I feel that, eh, (inaudible) every auditor has a wide area of discretion even, even in areas like this.

COOLEY: Well every audit is separate and every agent works differently, we're not, uh...

BARON: Of course, uh...

COOLEY: We're not from... (inaudible)...

NICHOLAS: ...(inaudible)...do a stupid thing, you know. Into my mind you know. Oh, not because I have any with the...I even told this to Murray. I was going to send you a whole turkey dinner for Thanksgiving. Not for any other reason but you just moved into a house, Right? And I figured well this is just your first year, this is good luck. I'll send him a whole turkey dinner and everything.

BARON: Nick, you're, you're so accustomed to giving everything.

NICHOLAS: I know, I, I said look.

BARON: ...(inaudible)...

NICHOLAS: I said that to Murray. I even got your address, like. I even had your address. I even had your address. It's not the turkey meant anything. It wasn't the dollars involved. In my mind I thought, Jesus, let the guy, he's got a new home there. It looks like a nice, let me send him a turkey dinner and some wine, some whiskey. Just for, eh, is that right or what? In fact I'll tell you the address of your house. It was, eh, 208th Street, I think in, eh, Bellerose.

BARON: I, I mentioned to him the fact that ...(inaudible)...

COOLEY: You got it.

NICHOLAS: I mean, I'm willing to do anything, eh. Jesus if I can, eh, if we can do what Murray said. If we can work something out, it's nobody's eh, business.

COOLEY: I have to ask the same question again.

NICHOLAS: I know...

COOLEY: He says I'm grown up but eh, you know, you have to be more specific.

BARON: Look why don't we, before we get into it. Wait until he's finished.

COOLEY: Well, all right...

BARON: He's got other areas.

COOLEY: ...I have more to do and, eh.

BARON: He's got plenty of work here to do.

NICHOLAS: Well, I'd like to, I'd rather, I'd rather settle it now if I could so I can sleep, for Christs sake.

NICHOLAS:

But Jesus I tell you. Think it over carefully will you please and see what we come up with. It'll be worthwhile. I mean it and I'm not looking to, eh. I don't know how to say it, but Jesus, I hope you can read my mind.

COOLEY:

No I can't read anything.

NICHOLAS:

I know, I know, I know, listen.

COOLEY:

You can't read mine and I can't read yours.

NICHOLAS:

I know. Right, right. Well, sometimes you have that extra...

...(inaudible)...

BARON:

As I said keep an open mind and, eh...(inaudible)...give us a break

NICHOLAS:

Yeah...

A 84

November 29, 1972 Transcribed Conversation
Number 1c

BARON: Look...(inaudible)...as good a citizens as any. We're not gonna go robbing banks. We don't want to tell you anything that will affect your findings. All I can tell you is, if you can find your way to give them a break, they'll find a way to show their appreciation. I can't put it any more concretely. We're not trying to tell you to do anything to jeopardize yourself.

NICHOLAS: Right, right. I can't...

COOLEY: You have to put it more concrete...

BARON: Ha, ha, ha...

COOLEY: ...because I have a job. All right. Unless you make things more concrete, I'm doing my job exactly the way I have to do my job.

NICHOLAS: I can give you a good foundation, a concrete foundation.

November 29, 1972 Transcribed Conversation
Number 1d

BARON: It rubbed me the wrong way, I tell you morally. But look, this is business nowadays. This is the way things are done. You know?

COOLEY: I think they've always been that way to some degree.

NICHOLAS: Listen, eh...

BARON: You're probably right. You're probably right.

COOLEY: Well, I really, I gotta make it back to Brooklyn.

NICHOLAS: I'll plead with you, okay? And I know it won't be bad. I know that.

BARON: Look, Mr. Cooley, eh, we're not gonna do anything to get you in any diff..., trouble under no circumstances.

NICHOLAS: ...(inaudible)...

BARON: So we're not looking to, eh.

NICHOLAS: Here's my hand. Ha...(inaudible)...Jesus Christ.

BARON: So, eh, you know this is not, eh, this isn't an easy buck here.

NICHOLAS: No. It's not an easy dollar. It's a hard dollar, hard work. You gotta keep on top of everything. I know you're busy, you're in a hurry to go.

COOLEY: Well, I gotta make it back to the office before it closes.

BARON: ...(inaudible)...

COOLEY: Yeah.

NICHOLAS: Where is that, Manhattan or Queens?

COOLEY: Brooklyn.

NICHOLAS: Oh, Brooklyn, oh, Jeezzz...(inaudible)...

BARON: ...(inaudible)...Mr. Cooley, you gonna take off your home as a biz..., office expense?

COOLEY: I wish we could.

NICHOLAS: But, eh, Murray. I don't know what to say. I don't know what to say but I knew I could, I'll work anything out...

BARON: Look, Nick. He may come in next time and find another item. A

December 21, 1972 Transcribed Conversation
Number 2

A : 86

BARON:

Ken, look, the way I feel about it, it has nothing to do with you and them. If you feel that, you know, any arrangements that you want to make I never want to stand in anybody's way. I never want to get involved either... (inaudible)...I don't know if a man's in business for himself that's fine with me. I would never stand in anybody's way.

COOLEY:

But again, just like the last time, eh, Mr. Vowter was talking. I can't talk for him. If he wants to say something, he has to say it.

BARON:

I, I, I can't...

COOLEY:

No I'm not, eh...

BARON:

I, I don't, I don't want to get involved...(inaudible)...I mean I, I told you originally. I said anybody who's ever done them a favor they've been very liberal, but I wouldn't get involved...(inaudible)...Its got to be between you and them... I mean, I don't know what your situation is. You're a young guy and I don't know how, how badly you need it or, or what. It's entirely up to you...Matter of fact I wouldn't, wouldn't want to know about I wouldn't want, to be honest with you, you know what I mean. I wouldn't stand in the way of anything but I don't want to...(inaudible)... it's their problem not mine. Shall we go?

December 21, 1972 Transcribed Conversation
Number 2a

BARON: Ken

COOLEY: No thanks really...

BARON: Ken

COOLEY: Huh?

BARON: Don't open it until you get in the car.

COOLEY: Why?

BARON: It's holiday time. Everybody's entitled to something.

COOLEY: Yeah but you have to tell me why.

BARON: You just... Okay. Nestor. And I want you to know this is just eh for now.

COOLEY: Well still you have to talk some more.

BARON: Don't worry about it.

COOLEY: No now seriously I'd like to know what I'm getting. You know this, it's eh, type of blind....and what's expected of me for that?

BARON: Do you want to go over the commissions with me?

COOLEY: Excuse me.

BARON: Do you want to go over the commissions with me?

COOLEY: Where's commis...

BARON: ...(inaudible)... You gonna be leaving soon?

COOLEY: Where's commission is.

BARON: He has papers on it.

COOLEY: Oh, oh. I thought you said something else. Eh, yeah. If he has the papers, I mean, if he has the names we can make photostats and, eh, I'll put that right in my work-papers.

COOLEY: Do you want to talk about what you just showed me or ...would you like to talk privately about it?

BARON: There's nothing to discuss with you now.

COOLEY: Well.

BARON: It's between you and them.

COOLEY: Well then, eh...

BARON: ...(inaudible)... Nestor. Do you want to go over the commissions...(inaudible)...

NESTOR: Sure...(inaudible)...

BARON: Commissions and...(inaudible)... some papers on it.

NESTOR: Yep. I've got it...(inaudible)...over here.

BARON: I don't, I don't know how far we can get this afternoon because, eh, Mr. Cooley has to, eh.

NESTOR: He has to run?

BARON: ...(inaudible)...

COOLEY: Yeah. At three o'clock I have to get out.

BARON: ...(inaudible)... to take care of so.

NESTOR: Ok, eh, Murray.

BARON: I don't know if you even want to start getting into it ... (inaudible)...

COOLEY: Well if it's a big list.

NESTOR: Let him, let him get a idea of what's.

BARON: Yeah. Maybe you ought to give him a little background,

Nestor...(inaudible)... stories.

NESTOR: Now here's what we did. I had myself put down the names of companies and I put down the names of persons that I take care of. The way it usually works, when a salesman's not involved we give 'em ten percent.

DARON: ...
COOLEY: Explain it to Mr. Cooley
DARON: Uhm.
COOLEY: He's the one...(inaudible)...
NESTOR: I wanna make some notes.
COOLEY: ...(inaudible)...invoice says.
NESTOR: You said when a salesman is involved?
COOLEY: When a sales...is not involved.
NESTOR: When a salesman's not involved.
COOLEY: This is something, we've lost orders, but we gained more than we, much more than we lost by doin' this here.
NESTOR: Uhm hum. Now.
COOLEY: We're gonna lose the account.
NESTOR: Now do you realize the fact that if you give me this, if you give me copies of this, that this could involve any one of these people.
COOLEY: Yeah. We'll kill, we'll, eh, we gotta take, eh, we just can't do that Murray.
NESTOR: This is, this is, this is the problem. This is the problem, oh,
COOLEY: And also.
NESTOR: We'll lose every one of those accounts, we'll lose every one of these accounts.
COOLEY: You know, Mr. Cooley, this is, this is.
NESTOR: You wanna close that door, eh.
COOLEY: You see this is, this is required to do business. I mean, I, I, I, I personally could not say, you know, I, I know that they gave this but to do business this is what's required. See I have a client in a similar line, not the exact same...(inaudible)...
COOLEY: Uhm hum.

BARON: And they're faced with the same situation. You don't do it you don't do business. I mean, that's what's required. I mean, it, it just cut and dry. Down the line, you have to do it.

COOLEY: Well,... (inaudible)....you wanna give me copies of that.

NESTOR: No, I'd rather not...(inaudible)....Jesus Christ.

BARON: Ken,...relax Nestor, relax...Look Ken.. You, you realize... (inaudible)...they do have a lot of, I mean there must be some....

COOLEY: Oh, thank you

BARON: You must have some leeway...(inaudible)....

COOLEY: No you realize...

BARON:you could meet us, eh, a masonable way on this.

COOLEY: The only way I can do anything is if I show something

BARON: If, if if one of these guys gets picked up, you know, and it gets around, we're out of business.

COOLEY: But there are only two ways I can do it, and only one way is the right way. Now if I, if I have a list of names, people that got the money, then eh, you're off the hook. If I don't, I have no way of explaining it.

BARON: What would happen? Would they necessarily go after these people?

COOLEY: Well that's sort of beyond my, eh... Are any, eh, people involved get big sums or is it mostly little?

NESTOR: ...(inaudible)...200, 300, one may have got a thousand bucks. One got a thousand.

COOLEY: See I really can't tell you, I really don't know the office procedure.

BARON: But this, this is a continuing thing, you know what I mean. One guy, if they find out one guy you know we're dead.

COOLEY: But I really don't know the office procedure. This would have to become part of my case. It would be reviewed.

BARON: Why, why do you have to have it for your papers? You haven't taken a lot of other stuff, in your papers.

COOLEY: Here I'm doing, I'm doing T & E. See what I'm writing? Any item like this... Any item like this where you have a cash expense or ah, eh, entertainment or something or a gift, you have to be very specific. I can show you the form that they designed for us. This is an idiot form. We have to actually check off that there was a concurrent entry, the place the identity the purpose, the bill. This is the type of, eh, area that you're in. I can't say, what can I say that I saw, eh, you tell me what you want me to say.

BARON: Ken I, I don't want to push you but I don't know, how far you can go. I know you have a lot of leeway.

COOLEY: Well you tell me what you have in mind.

BARON: Can't you say you saw the list and you were satisfied?

COOLEY: Well ordinarily there would be 1099's wouldn't there? And ordinarily...

BARON: We, well, we well... our regular salesmen, we have them on, on W-2's.

COOLEY: Right.

BARON: These are outside guys. How could you put them on 1099's, eh,...I don't know, look.

COOLEY: Well, you want me to discuss this with the both of you, eh, let Mr. Vowteras come in or...

BARON: Look, discuss it with him, all right?

COOLEY: Uh huh.

BARON: I, I can't say to you Ken, look, I know they paid this money. I don't live with these guys, you know what I mean...

COOLEY: Uh hum.

BARON: ...it could be...

COOLEY: Well, I'll, I'll explain it to you the same way I can ex...

BARON: ...(inaudible)... You know, eh... Does that explain it to you?

COOLEY: But I have to know exactly what is involved.

COOLEY: All right, I'll ask you this was written here, now I ask what's expected of me for that.

NESTOR: Good question.

COOLEY: Well, I can't answer it you have to.

BARON: Look Ken be.

NESTOR: Give me a a minute.

BARON: Be reasonable, I mean I think that most of the stuff you've gone into here...(inaudible)...The only thing you came up with so far is on the travel expense the first time ...(inaudible)...

COOLEY: Uh, huh.

BARON: ...(inaudible)...question. Isn't there some way we can uh, compromise it...you know...I, I do seem to feel that you do agree with us that we do have the expense.

COOLEY: I, I, I indicated that whether I agreed or not.

BARON: Right, you have certain...(inaudible)... because you need it for,...well , we need you.

NESTOR: Let me just think a minute...(inaudible)...

COOLEY: Well you seem... you seem to... you seem to indicate that these two things together are miniscule and they're not. You're talking about these two things combined are ten percent of sales. You're talking about a big item on the return.

December 21, 1972 Transcribed Conversation
Number 2c

A : 94

NESTOR: You're right we have a a problem with that there. There's one way of working it and the other way. I don't know if I'm in line to say, uh, what I want to say. I could be way out in left field. I don't know. If we could compensate for some how to get that thing down, I'll work it out personally with you and...

COOLEY: Well you have, you have to tell me exactly what you mean.

NESTOR: Now, I don't know if I'm doin' the right thing. This is new to me.

COOLEY: Well I can't...

NESTOR: A good gratuity or eh, something. Something real good (inaudible)...anything that I could get myself in trouble for working out, uh how to put, uh, it I'm not experienced at this here.

COOLEY: Well there's a figure written here.

NESTOR: What is the figure on there that we're...

COOLEY: There's a five with a circle around it.

NESTOR: Five?

COOLEY: Um hum...

NESTOR: Five grand?

COOLEY: I imagine that's what was meant by that.

NESTOR: That's right.

COOLEY: What is meant by that?

NESTOR: I don't know, I didn't even see it. That's the first time I've seen it.

COOLEY: Uh hum, well, Mr. Baron wrote it...

NESTOR: You think I ought to call him in and ask him? I don't know.

COOLEY: I asked him what was meant by it. I said, eh, eh, what exactly, you know, does he expect, and, eh, I haven't gotten an answer.

NESTOR: Right, well let me give, that's where your man come in. I'm the owner of the business here.

COOLEY: Uh hum

NESTOR: I'm the one who worked 33 years and sweated until... (inaudible)... my brother and I. Is five grand... five with three zeros?

COOLEY: Is it what?

NESTOR: Huh?

COOLEY: Is it what?

NESTOR: Is it OK or, eh?

COOLEY: OK for what? I can't, I can't make any assumptions.

NESTOR: Yeah, to help us get out of.

COOLEY: Well what exactly do you want done?

NESTOR: I don't know, I don't know what, to, to, give these people in means that we lose an account.

COOLEY: Uh hum.

NESTOR: And they lose their jobs. Or we have to take it on the button and lose the hole works on it.

COOLEY: So what exactly do you want me to do?

NESTOR: Well I was thinkin if, if you can come up with, and help me, give me a little lead on it, I'll give you five now and five next week or, you know, eh. I can catch the bank before they...

COOLEY: Well I don't know, eh.

NESTOR: Would you help us to work out this thing here, that's what I'm talkin' about.

COOLEY: So, in other words, for that figure, you want me to, eh...

NESTOR: Work this here out with me.

COOLEY: Work it out to what?

NESTOR: You tell me.

COOLEY: Well I can't tell you I...

NESTOR: ...(inaudible)...

COOLEY: I can't tell you I can only ask what you mean, and then, if you tell me what you mean.

NESTOR: All right, you say according to this here, how much do we owe fifty-nine?

COOLEY: Well it's a 59,000 dollar item that we're talking about.

NESTOR: Is it worth ten-fifteen thousand dollars, if we can get a bre...,eh.

COOLEY: If you can get what, I'm trying...

NESTOR: Get it off our hands.

COOLEY: Completely?

NESTOR: Yeah...

COOLEY: All right, so eh...

NESTOR: I'll give you five now and meet me any morning you want, anywhere, and I'll bring you the cash.

COOLEY: To forget about this completely?

NESTOR: Boy, it'd be a tremendous help to us. We got an expansion program and this is gonna murder us. We're going to Little Ferry and eh we're waiting for the C.O. Everything is closed. We're waiting for the C.O. and it'd murder us if we get that. This'd put the whole thing back.

COOLEY: All right.

NESTOR: ... (inaudible) ... you have to be outta here by 3 right?

COOLEY: About three o'clock.

NESTOR: Let me go right down to the bank and get the money for you ... (inaudible) ...

COOLEY: How many people are involved in this?

NESTOR: Me and my brother...

COOLEY: Uh huh.

NESTOR: ... only. You see I got Murray out of the office. I got him outta here. He doesn't know why I got him outta the office. I said the girl asked him some questions. It's none of his business.

COOLEY: Uh huh.

NESTOR: We're the owners here. We're the ones, that worked. He put 500 in there before. I said that's not, fi... what's 500?...

COOLEY: Uh, huh.

NESTOR: ... You see this is the thinking. Believe me. I'm going to put it in my name and charge it as a loan to me. Okay?

COOLEY: Okay.

NESTOR: Tell me what morning you want me to meet you or anything and I'll deliver it... (inaudible) ...

NESTOR: ... (inaudible) ...

COOLEY: Okay.

NESTOR: There's 500 in there now... (inaudible) ... 45... (inaudible) ... in an envelope. You tell me when to meet you. Tomorrow. Tomorrow's a good day.

COOLEY: Well not really. We're having our Christmas party at work and eh.

NESTOR:

In the evening, tomorrow evening? I'll make it my business.

COOLEY:

No I'll get in touch with you.

NESTOR:

You'll let me know a day before, not over the phone, though. Just set a date and a time and I'll have everything here for you.

December 21, 1972 Transcribed Conversation
Number 2d

COOLEY: And what is, eh, the rest of the deal?

NESTOR: You tell me.

COOLEY: No I can't tell you. You have to tell me.

NESTOR: Eh, 10...

COOLEY: Total or more?

NESTOR: Ten more.

COOLEY: Fifteen total?

NESTOR: Right. Then you just tell me when, uh, morning. You just come in and make believe you're checking something and I'll have it like that and that's it. Eh, listen there's 500 here.

COOLEY: OK.

NESTOR: Do we need this here stuff in this box?

COOLEY: Not right now, no. And the...(inaudible)...

NESTOR: ...(inaudible)...

COOLEY: ...and the, eh, what you want done is you want, eh.

NESTOR: That wiped off.

COOLEY: Completely. O.K.

NESTOR: And Ken, you have a friend for life. God forbid you ever need anything, you come in here, Nestor, as long as I'm alive. I'm not a kid anymore, I'm 58 now you know. Tickets for the theatre, mezz boxes, football games, for your wife, new television, anything, anything. We get big discounts on anything we do.

COOLEY: Who, oh, handled the liquor bottle?

NESTOR: Eh, Gimott. Dan Rubino gives it to the salesman. We have our own people that we give it to.

COOLEY: No, I mean this one here.

NESTOR: This one bottle?

COOLEY: You said somebody put 500 dollars in there.

NESTOR: Murray put the 500 in.

COOLEY: Murray?

NESTOR: I gave it to him.

COOLEY: Right. No, I just want to know who's involved, because I have to.

NESTOR: As far as he knows it's 500 there.

COOLEY: Uh huh.

NESTOR: He doesn't know about this other business.

COOLEY: Eh, because I mean I have to know who's involved.

NESTOR: Yeah right. He knows 500. He doesn't know nothing else, and he's not going to know nothing else. We'll let him do the talking to me...

Decemb r 27, 1972 Transcribed Conversation
Number 3

NESTOR: Ken there's five...(inaudible)...

COOLEY: Oh. Right under the desk.

NESTOR: Ha, ha, ha, eh, I didn't have enough in my personal checking account. So you said you think you can finish today? 'Cause if you think you can finish today, I'll go get the, eh, I didn't know. You think you can clean everything up today?

COOLEY: Well, it depends on, eh, what you.

NESTOR: You let me know. Lets see.

COOLEY: That depends on what you want me to do.

NESTOR: Yeah I got a half hour.

COOLEY: It depends on what you want me to do.

NESTOR: Eh, you know I'm hard of hearing. I guess you know that or you heard about it. Oh. You're talking about the commissions and the T&E.

COOLEY: Right...

NESTOR: Well, eh, the way we left it the other day was, eh, try'in wipe it out.

COOLEY: Eh, the other day you were speaking of just the commissions. Though, right?

NESTOR: Was that just the commissions we were talking about?

COOLEY: Well I don't know. You tell me.

NESTOR: Yeah, I meant, eh, both, but, uh...

COOLEY: You meant both?

NESTOR: Yeah that's what I meant then

COOLEY: All right, you want to wrap it up today?

NESTOR: Yeah, sure. All right, you got some work to do?

COOLEY: I can, eh, look busy.

NESTOR: Eh, I'll get my brother to sit in...(inaudible)...

December 27, 1972 Transcribed Conversation
Number 3a

NESTOR: ...(inaudible)...

COOLEY: Can I count it?

NESTOR: Yeah, I double checked that and I double checked the first one...

COOLEY: That's one. ... Two ... Three ... Four ... Five in one of them.

NESTOR: Pardon?

COOLEY: Five in one of them.

NESTOR: Yeah. The other one I double checked.

COOLEY: One. ... Two ... Three ... Four ... Five. I guess the bank doesn't make any mistakes.

NESTOR: Pardon?

COOLEY: The bank doesn't make mistakes.

NESTOR: Oh no. ...(inaudible)....Happy New Year.

COOLEY: No really it looks. ...

NESTOR: No.

COOLEY: It looks too conspicuous.

NESTOR: OK..I'll take it home with me...(Inaudible)....

NESTOR: So, what's the next step now, eh.

COOLEY: Well, let's, let's make sure we have our understanding correct.

NESTOR: Right.

COOLEY: OK, so, eh, well you tell me once more, and then we won't have any confusion.

NESTOR: Yeah well like, eh, like you said. You were talking about commission. I thought it was T&E. Everything will be wiped out.

COOLEY: You want it completely to zero?

NESTOR:

It would be a big help. I tell you; he, eh, I'm in the fire...(inaudible)... with our expansion program, that's the thing...

COOLEY:

...Uh, hum

NESTOR:

...It would hit us hard. I'll tell you one thing. If you ever, the day that you're looking for a job as controller my boy you got the job. If you decide some day to leave what you're doing and come into some other field; brother you'd be the guy I'd want as a controller Young; you know the figures and I'm sure I'd never get into any trouble. You never know maybe a year or two years you'll be tired of what you're doing. Well, were growing every year. Were growing.

December 27, 1972 Transcribed Conversation
Number 3b

NESTOR: Does this cancel out the February meeting, eh, Ken.

COOLEY: Yeah, I'll get in touch with you.

NESTOR: With me?

COOLEY: Yeah.

NESTOR: O.K.

COOLEY: And, eh...

NESTOR: Now what would be the next procedure on that?

COOLEY: Well, I have to think about it. I have to think about what I'm gonna do.

NESTOR: Pardon?

COOLEY: I have to think about, you know, how to take care of this.

NESTOR: O.K.

COOLEY: All right.

NESTOR: When, when you call me, am I free to talk, or, eh.

COOLEY: Well today I called from an outside phone. I wouldn't, I wouldn't call from the office

NESTOR: Yeah. I didn't think you would. When you told me about being off tomorrow...(inaudible)...No, I'm glad that we could settle this, because... (inaudible)... ...although they would have opened up for me I'm sure.

COOLEY: Uhm. You have friends down there?

NESTOR: Oh yeah. We're, we're a good account there. We're the number one account. Not only that, I get them an awful lot of business, I got the other places going to them too.

COOLEY: What you said, you took this out of your personal account?

NESTOR: Pardon?

COOLEY: You said you took this out of your personal?

NESTOR: No, no I found I didn't have enough. The first one I did, The first one I did that.

COOLEY: O.K. So there's no sense in my staying here.

NESTOR: Very good Ken,...(inaudible)...and, uh, listen, anything you want theaters, anything. You just have to call Nick or I. Remember you asked me last week...(inaudible) ...those kind of questions who knew about this? Only he and I.

NICHOLAS: Right.

NESTOR: Only he and I.

NICHOLAS: Right. We appreciate, listen it...

NESTOR: We're together 33 years and we don't hide nothing from each other.

NICHOLAS: Right.

NESTOR: That's as far as it goes.

NICHOLAS: That's it.

COOLEY: How about the other officers?

NESTOR: No.

NICHOLAS: No. No, they don't have to know anything. It's none of their business. We are the senior officers here.

NESTOR: Listen we gave them a ten percent...

NICHOLAS: Yeah, they're eh.

NESTOR: Bonus.

NICHOLAS: Bonus.

NESTOR: But he did, he earned it. This boy earned it...

NICHOLAS: He's on the ball.

NESTOR: The other fellow, question mark. He got nine percent.

NICHOLAS: Yeah.

NESTOR: So we can get relief.

NICHOLAS: You know that's, eh...

COOLEY: A nine looks like a question mark.

NESTOR: Pardon?

NICHOLAS: Yeah

COOLEY: A nine looks like a question mark.

NICHOLAS: Yeah, that is, yeah.

NESTOR: Dan, Dan is the boy, he's...

NICHOLAS: ...Yeah

NESTOR: ...gonna be the future of ARGO and a good boy.

NICHOLAS: So, listen, we're trying to...

NESTOR: So, we thank you very, very much.

NICHOLAS: ...make you know. Listen I really appreciate it, Ken. Thank you very much.

NESTOR: And have a happy and healthy New Year.

NICHOLAS: Yeah, right.

COOLEY: And eh, take care of yourselves.

NICHOLAS: Right anytime you need something.

NESTOR: Thank you very, very much Ken and anytime. I told Nick, if I'm not here...(inaudible)...

NICHOLAS: Oh yeah.

NESTOR: Theaters.

NICHOLAS: Anytime. Anything.

NESTOR: Football, baseball, hockey.

A 107

NICHOLAS:

Anything.

COOLEY:

O.K.

NESTOR:

We have season tickets here for our customers.

NICHOLAS:

Heh, heh, heh.

NESTOR:

...(inaudible)...

COOLEY:

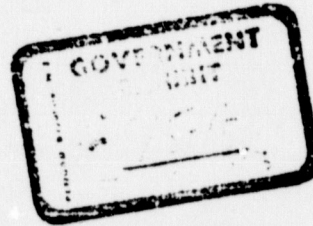
Am I a customer?

NESTOR:

Yep.

JB:PBB:ed
. #731151

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK



----- -X
UNITED STATES OF AMERICA

--against--

STIPULATION

73 CR 583

MURRAY BARON,
NICHOLAS VOWTERAS and
NESTOR VOWTERAS,

Defendants.
----- -X

IT IS HEREBY STIPULATED AND AGREED, by and between
the attorneys for the parties hereto that,

1. Government Exhibits 2 through 15, the tape
recordings in this case, have been in the custody and
care of the Internal Security Division of the Internal Revenue
Service since the dates of their case; and it is further
stipulated and agreed, that

2. Those tapes, that is, Government Exhibits
2 through 15, have not been erased, altered or in any manner
tampered with and that they are in the same condition now as
they were when first used, and it is further stipulated and
agreed as follows:

A. Government Exhibit 2 is a tape recording
of a telephone conversation between Kenneth Cooley and Murray
Baron on October 12, 1972.

B. Government Exhibits 3 through 6 are four tape recordings of the conversations between Kenneth Cooley and the defendants held on November 29, 1972.

C. Government Exhibit 7 is a tape recording of a telephone conversation between Kenneth Cooley and the defendant Murray Baron held on December 13, 1972.

D. Government Exhibits 8 through 11 are four tape recordings of the conversations between Kenneth Cooley and the defendants held on December 21, 1972.

E. Government Exhibit 12 is a tape recording of a telephone conversation between Kenneth Cooley and the defendant Nestor Vowterras held on December 26, 1972.

F. Government Exhibit 13 is a tape recording of a telephone conversation between Kenneth Cooley and the defendant Nestor Vowterras held on December 27, 1972.

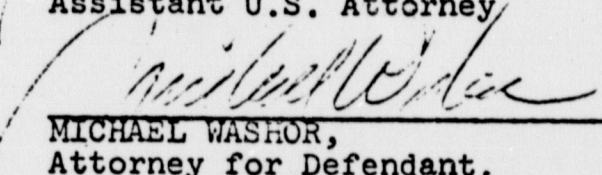
G. Government Exhibit 14 is a tape recording of a conversation between Kenneth Cooley and the defendants Nestor Vowterras and Nicholas Vowterras held on December 27, 1972.

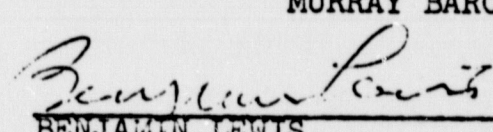
H. Government Exhibit 15 is a tape recording of a telephone conversation between Kenneth Cooley and the defendant Nestor Vowterras held on January 4, 1973.

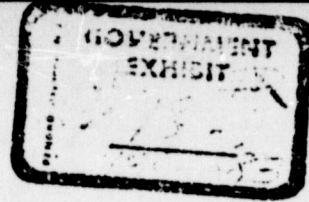
Dated: Brooklyn, New York
November 27, 1973

ROBERT A. MORSE,
United States Attorney
Eastern District of New York
11-2-73

By: PAUL B. BERGMAN
Assistant U.S. Attorney


MICHAEL WASHOR,
Attorney for Defendant,
MURRAY BARON


BENJAMIN LEWIS,
Attorney for the Defendants
NESTOR VOWTERAS and
NICHOLAS VOWTERAS



I had made conversation about buying all the post office was doing on it would cost. I forgot that I was to get a mail tray 3 years and I arrived with it and that in fact it still works as a second job.

income just the other items. I again asked what kind of offer. Again he said appreciate we were getting out of the car going on our way back in to the place and I made some small conversation about cars. Then I said wait a minute, before we go back in, tell me how they would express appreciation. He said we'll talk more about it when you see the numbers. We went back inside and nothing was said until about 4:00. I got up to get a cup of coffee from their machine and they (Nick Mowter, as and accountant) followed me into the shop where the machine was located. N.V. proceeded to take me on a tour and show me the types of machines and explained some of them to me. He told me he has a machine to give me. He said you keep it in your garage in case you ever get a flat tire or you can use it as a paint sprayer with attachments. It was a small portable air compressor (size of hand truck). I refused it. Arct said take his address and deliver one to him. I refused stating I didn't want anything when leaving and said that I was the better off.

12:15 PM

On the way to Restaurant A 112.

I just want to tell you that these are probably going to make you some time of part time offer so don't be alarmed that way they are.

At lunch

I don't mean to flatter you but you seem to be a very personable individual.

On way back to office

So would you be interested in some kind of part time offer? I replied no.

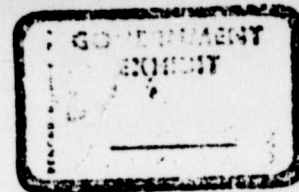
In the car I asked what kind of part time offer he was referring to.

He explained that I may not understand the business and he said I'll give you some of the background. He stated that the business was built from nothing to a concern doing 1 1/2 million. This is done in a competitive industry unless you give something to this one and that one. You have to pay off and do a lot of entertaining. I guess you've been doing audits long enough to know that. I asked again what specifically did he mean by a part time offer. He said well, they would express their appreciation for any consideration I could offer them on promotional and commission expenses. Let's face it there are some things that you can't keep records on. They report all their sales, there's no omission of

Why would they make an offer. Forcibly you're doing you have a mortgage to pay you know I don't have to tell

A
AFFIDAVIT

113



United States of America)
Southern District of New York) ss

I, Kenneth Cooley, state that:

I reside at 89-42 208th Street, Bellerose, New York 11427

I am employed as an Internal Revenue Agent, GS-9 in the Brooklyn District, Group 1301.

I was routinely assigned the audit examination of the fiscal year ending September 30, 1971 Corporate Income Tax Return Form 1120 of Argo Compressor Service Corporation, 19-35 Hazen Street, Jackson Heights, New York on July 18, 1972.

On October 11, 1972 I met with Nicholas Vowteras, President, Nestor Vowteras, Secretary Treasurer, and their representative Murray Barzon, CPA at the offices of the taxpayer. During the course of that meeting, on the way to lunch, Barzon stated "These guys are probably going to make you some kind of part time offer, so don't be alarmed, that is the way they are". I did not answer Mr. Barzon. After lunch Barzon stated "So would you be interested in some kind of part time offer"? I asked Mr. Barzon what kind of part time offer was he referring to and what specifically did he mean. Barzon stated "They would express their appreciation for any consideration you could offer them". This comment was made in reference to claimed expenditures of \$63,396.69 for commission expenses and \$58,351.54 in connection with Promotional and Selling Expenses. I asked Mr. Barzon why the taxpayers would make me an offer. Barzon responded by stating "Face it, your young, you have a mortgage to pay, I don't have to tell you". I again asked Mr. Barzon what kind of offer and he responded by stating "Look they will show their appreciation". I asked Mr. Barzon ^{how} they would show their appreciation. Barzon stated "Well we'll talk more about it when you see the numbers".

During that same day taxpayer Nicholas Vowteras, subsequent to his explaining the operation of his business to me, offered me a portable air compressor for use in my home. I refused the machine. Mr. Barzon then advised Nicholas Vowteras to take my address and have the Machine delivered to my home. I estimated the value of that machine to be approximately \$200. I told Mr. Barzon and Mr. Nicholas Vowteras that I did not need any machines. *CC*

(continued)

I concluded my audit examination and terminated the meeting at approximately 5:00 p.m. that day and scheduled a subsequent appointment for November 27, 1972 at the taxpayer's offices. *HC*

I have read the foregoing statement consisting of 2 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each.

I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

Subscribed and sworn to before me this 13th
day of October, 19 72,
at 26 Federal Plaza, NY, NY

Kenneth Cooley
(Signature of affiant)

Sumner Goldburg
(Signature)
Inspector (15)
(Title)

Robert O. Reine
(Signature of witness, if any)

Internal Revenue Service

A 115

6627

[illegible]

Argo COMPRESSOR Service Corp.
 Affiliated with Long Island Compressor Corp.
 19-35 HAZEN STREET
 JACKSON HEIGHTS, L. I., N. Y. 11370

31

Dec. 21 1972 $\frac{1.758}{260}$

PAID
TO THE
ORDER OF

Hester Venter DEC 21 '72

55 600 150

THE SUM OF 0000 DOLS 00 CTS DOLLARS

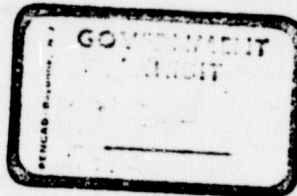
ARGO COMPRESSOR SERVICE CORP.

ATLANTIC BANK
OF NEW YORK
22-10 DITMARS BOULEVARD
ASTORIA, N.Y. 11105

Vester Vanti

• 1:0260007581: 05001 2850

0000500000



DEC
21

11.2

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-19-88 BY SP-6
JAN/AMC

GOVERNMENT EXHIBIT 24

A 116

[illegible]

**GOVERNMENT
EXHIBIT**

11% 200 2000 01020304050

UNCLAS//FORN DISSEM

10 - 2 - 1945 11:45 AM

9071 9071

GOVERNMENT EXHIBIT 24A

A 117

[illegible]

Argo Compressor Service Corp.
 Affiliated with Long Island Compressor Corp. Inc.
 19-35 HAZEN STREET NEW YORK
 JACKSON HEIGHTS, L. I., N. Y. 11370

6644

**PAY
TO THE
ORDER OF**

Hester Von Dec 27 1872

Dec. 27 1972 $\frac{1.758}{260}$
\$5000 $\frac{0.00}{1.00}$

THE SUM 5000 DOLLARS DOLLARS

ATLANTIC BANK

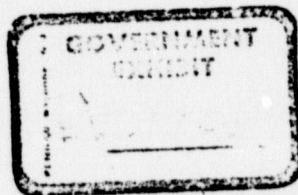
OF NEW YORK
22-10 DITMARS BOULEVARD
ASTORIA, N.Y. 11105

ARGO COMPRESSOR SERVICE CORP.

Wm. Vassett

• 1:0260 07581: 05 001 28511

0000500000



11-2042050 10-4-59

01-02-19

ATLANTIC BANK OF NEW YORK

NY 100-108100-100

9041 8041

GOVERNMENT EXHIBIT 24B



A 118

SAVINGS BOOK NO. A7334 DATE 12/27 19 72

DOLLARS	CENT
10,000	00

SAVINGS ACCOUNT
WITHDRAWAL

Received from ATLANTIC BANK OF NEW YORK

Ten thousand 00/100

DOLLAR

DO WE HAVE YOUR MOST RECENT ADDRESS?
IF NOT, PLEASE COMPLETE OUR CHANGE
OF ADDRESS FORM.

[Signature]

SIGNATURE

[Signature]

DEC 27 1972

3,000.00

D

6,000.00

2071 (8-69)

DO NOT WRITE IN THIS AREA. FOR BANK USE ONLY

3 ATLANTIC BANK OF NEW YORK 34

DEC 27 '72

GOVERNMENT EXHIBIT 24C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA :

-against- :

NICHOLAS VOWTERAS :

73 CR 583

Defendant :

-----x

United States Courthouse
Brooklyn, New York

March 1, 1974
10:00 a.m.

B e f o r e

HONORABLE ORRIN G. JUDD,

U. S. D.J.

SHELDON SILVERMAN
Acting Official Court Reporter

Appearances:

EDWARD J. BOYD, V, ESQ.
United States Attorney for the
Eastern District of New York

By: PAUL BERGMAN, Esq.,
Assistant U.S. Attorney

BENJAMIN LEWIS, Esq.
Attorney for Defendant

Also Present:

JACOB P. LEFKOWITZ, Esq.
Attorney for Nestor Vowteras

1
2 MR. LEWIS: Whether or not this motion
3 is granted is in the Court's discretion. It may
4 raise a problem whether my representation was
5 effective.

6 THE COURT: I don't see Mr. Lewis has shown
7 or Mr. Lefkowitz has shown any conflict of interest.
8 He has simply said Mr. Nestor didn't know what he
9 was doing. I don't see a problem on that.

10 Any reason why sentence shouldn't be imposed?

11 MR. LEWIS: No.

12 THE COURT: This was a result of a trial,
13 and I have heard a good deal about the defendant
14 and the circumstances of the crime and you know
15 it's a serious matter. There may be some question
16 about the IRS policy of not telling somebody "I'm
17 straight and I'm not going to take any money."

18 The defense of entrapment was raised, and
19 denied. Tell me what you want on behalf of your
20 defendant.

21 MR. LEWIS: I know Mr. Nicholas quite well,
22 and his brother. These are people who have been
23 in business, a very competitive business. As I
24 said in my summation, somewhat the business
25 instinct in small business has some kind of a
jungle aspect about that.

1
2 Other than his business, he's never been
3 involved. He's a good family man, never had
4 marital problems. He's certainly not a danger to
5 the community in any respect.

6 I met socially with people who have known
7 him, people who are members of the bench, physicians,
8 attorneys, executives, and they all had the high-
9 est respect for him as a human being.

10 He was, in a sense, peripherally involved,
11 it's true, there was a conversation that was
12 equivocal at one point. His real activity was
13 saying "Thank you" to the agent at the end of the
14 situation about what arose in this case.

15 I feel certainly lenience of extreme
16 limits should be accorded Mr. Vowteras under the
17 circumstances. I think the trial, the indictment,
18 publicity, has taken its pain on this man. It's
19 something that will never happen again. The money
20 which, the business money, is gone. There will
21 be a tax when the Internal Revenue decides to
22 continue its examination. There's a substantial
23 financial penalty already been paid in connection
24 with this, besides legal fees, all the rest.

25 THE COURT: Mr. Bergman, do you want to

1
2 make any comment?

3 MR. BERGMAN: No, your Honor.

4 THE COURT: Mr. Vowteras, do you want to
5 say anything on your own behalf in mitigation?

6 THE DEFENDANT: I don't know what to say.
7 If I may continue, your Honor, I and my brother
8 have always been two hard-working men. We have
9 never been involved. Do we have to depend on
10 legal attorneys to try to defend us?

11 THE COURT: This is another ironic case.
12 If I were a jury, I would not have bought Mr. Baron's
13 statement that "I told the defendant to pay their
14 own bribes and to keep me out of the room when it
15 was done."

16 I think you were mis-served by the accountant,
17 but I still think we can't permit people to pay
18 bribes and then just say, "I'm sorry," and "I won't
19 do it again."

20 I'm going to impose a split sentence, one
21 year imprisonment with two months in custody, the
22 balance on probation. Unless I'm compelled to
23 impose a fine, I think Mr. Vowteras is going to
24 have enough financial problems paying his bills,
25 I won't impose a fine.

1
2 If and when I impose sentence on Nestor Vow-
3 teras, I will adjust the times so that one of you
4 is there at all times.

5 Now, Mr. Vowteras, you have a right to
6 appeal. If you file a notice, ask Mr. Lewis to
7 file a notice of appeal. He must do so within
8 the next ten days. He has to represent you on
9 the appeal unless and until he is relieved with
10 the consent of the Court of Appeals.

11 If you want a stay of execution pending
12 appeal, I will grant that.

13 MR. LEWIS: I will. May we request that.

14 THE COURT: I'll grant that.

15 MR. BERGMAN: There were two counts.

16 THE COURT: Concurrent on both counts.

17 ---
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-against- :

NESTOR VOWTERAS : 73 CR 583

Defendant :

United States Courthouse
Brooklyn, New York

March 1, 1973
2:00 p.m.

B e f o r e

HONORABLE ORRIN G. JUDD,

U. S. D. J.

SHELDON SILVERMAN
Acting Official Court Reporter

1
2 **Appearances:**

3
4 **EDWARD J. BOYD V, Esq.**
5 **United States Attorney for the**
6 **Eastern District of New York**

7
8 **By: PAUL BERGMAN, Esq.**
9 **Assistant U.S. Attorney**

10
11
12
13
14
15
16
17
18 **JACOB P. LEFKOWITZ, Esq.**
19 **Attorney for Defendant**
20
21
22
23
24
25

1
2 THE CLERK: For sentence, Nestor Vowteras.

3 MR. BERGMAN: I don't believe Mr. Lefkowitz
4 has filed a notice of appearance.

5 THE COURT: He has filed a motion on his back.
6 That puts him into the case. I don't need a separate
7 appearance.

8 MR. BERGMAN: For record-keeping purposes,
9 I would appreciate it.

10 MR. LEFKOWITZ: I'll provide it before I leave
11 the building today.

12 Your Honor, may I be heard on the motion.

13 THE COURT: Of course. I have read your
14 papers and your brief and as I said this morning,
15 I'm not sure what you show that was prejudicial
16 with respect to the trial. I warned the defendant
17 he had to make up his mind at that time whether
18 he wanted separate counsel.

19 MR. LEFKOWITZ: I understand. That is
20 correct. May I point out to you what I have sub-
21 mitted to the Court by way of application, and
22 that is why I know your Honor is pressed with
23 tremendous volume of work, but nevertheless --

24 THE COURT: I put it over so I could have
25 a chance to speak.

1
2 MR. LEFKOWITZ: I appreciate that. I know
3 your Honor, despite the pressure of work, handles
4 each matter singularly with complete attention.

5 Your Honor, what your Honor has just stated
6 to me is correct, but anyone who will read your
7 Honor's remarks made to Miss Voteras prior to
8 lunch on the eve of trial, your Honor is the one
9 who saw the point, namely, and I'm quoting your
10 words, "It is my judgment that maybe there is
11 a conflict of interest. Maybe Mr. Nestor has the
12 most at stake because his brother's testimony" --
13 and you were interrupted by Mr. Nicholas Voteras.
14 Your Honor saw this and not just because the DeBerry
15 case came down weeks before that, a very few weeks
16 before that.

17 Your Honor tried to impress this man with
18 this problem. My point, my application is based
19 on absolute newly discovered evidence. It all
20 came about that when I read what occurred in camera
21 at this DeBerry proceeding, and when I read
22 that a man whom I had never met before but who
23 was on the eve of trial facing the most important
24 matter in his life, which was a threat to his
25 liberty, to his business, to his position, replied

1
2 to your Honor in words to the effect, "I know all
3 that" -- I'm paraphrasing -- I have to get the
4 exact phrase: "I know all that. You have told me
5 that enough times."

6 Now, Judge, I have been around long enough
7 in this court and other courts that no matter what
8 kind of client I represent -- and some of them have
9 notorious reputations -- none of them have ever
10 made such a remark or response to a judge. When
11 I spoke to his brother Nicholas, I learned that
12 he had been seeing a psychiatrist for a matter of
13 many years. When I asked him --

14 THE COURT: So do lots of people. They're
15 still competent.

16 MR. LEFKOWITZ: Beg pardon?

17 THE COURT: So do lots of people, and they're
18 still competent.

19 MR. LEFKOWITZ: From my experience of
20 representing some psychiatrist, I think they are
21 the cause of incompetency on the part of some
22 people, but that's beside the point. Neverthe-
23 less, when I learned that, I then went down at
24 six o'clock that evening or thereabouts to see
25 my new client.

1
2 When I went in, your Honor, I saw a very
3 competent appearing person who was giving direc-
4 tions to at least three different people who
5 appeared at his desk. That was my first impression.

6 When I went into his private office and sat
7 there for about twenty minutes and when he came in,
8 his first remark is how hard he has been working,
9 fourteen hours a day, et cetera.

10 I then started questioning him about his
11 presence before your Honor on the eve of trial.
12 I asked him, "Did you make such a response to
13 Judge Orrin Judd?"

14 He says, "Yes. What's wrong with that
15 response?"

16 I questioned him further. As I did, he
17 started getting exorcised and I didn't want to get
18 him exorcised to the point before I was actually
19 fully retained, I'd be disretained.

20 I took it easy, but I formed my opinion when
21 I asked him various other questions relating to
22 what he did that day.

23 Now, your Honor, what that man did when he
24 left your courtroom is he walked outside where his
25 brother was present and the attorney who was

1
2 representing both of them, Mr. Lewis and an asso-
3 ciate of Mr. Lewis. He told Mr. Lewis that the
4 judge had said to him that he decide whether he
5 should retain a separate lawyer. It's his
6 decision.

7 Mr. Lewis replied to him that "it's a decision
8 you have to make. I don't see any conflict of
9 interest between you and your brother."

10 He says, "All right, I'll stay with you."

11 When they went to lunch, Judge, he refused
12 to go to lunch with them and they went to a restau-
13 rant. He went downstairs in the IRS building
14 adjourning our courthouse, where they have some
15 machines serving --

16 THE COURT: Where I ate this noon.

17 MR. LEFKOWITZ: I have eaten there, too,
18 your Honor. I'm describing a place your Honor knows.

19 He went in there and had a cup of coffee and
20 a sugar bun and he told me that evening, the first
21 time when I met Mr. Nestor Vowterias that when he
22 eats sweets, he blacks out. He doesn't know what
23 he's doing, et cetera.

24 I asked him, "Have you got hypoglycemia?"

25 He says, "Dr. Ferris is treating me," your

1
2 Honor. I called Dr. Ferris. I spoke to Dr. Ferris
3 and I was amazed to learn that this doctor, who
4 is a well-known and accomplished internist, who
5 had been treating Nestor Vowteras, told me that
6 Nestor Vowteras used that sugar statement as a
7 cop-out for his mental depression.

8 I said, "Doctor, are you sure? Would you
9 give me an affidavit to that?"

10 He said--if it please the Court, attached
11 to my motion papers is an affidavit of Dr. Ferris,
12 specifically setting this forth.

13 Your Honor, if all that I had would be this
14 medical testimony or affirmations, which were not
15 coupled with the actual facts of what this Nestor
16 Vowteras did on that day, on the eve of trial
17 when your Honor suggested to him based on your
18 learnedness, that he should consider getting a
19 separate counsel, and you said to him that if you
20 don't do this and you go to trial and are convicted
21 and then some lawyer will come in and argue that,
22 and at that point he interrupted and said, "You
23 have told me that enough times. I know that."

24 I submit these are facts which are not an
25 advocate's stock in trade, which he uses as a means

1
2 of procrastinating a delay in judgment in an import-
3 ant case.

4 Your Honor, these are facts which actually
5 occurred here. I have the affidavit of this doctor
6 Ferris and of this psychiatrist, Dr. Weitsen, and
7 their background as is set forth in the affidavit
8 shows to your Honor that they're accomplished
9 medical professional people.

10 Now, if what they say in those affidavits
11 are true, and I have no reason to doubt the truth-
12 fulness thereof, I submit to your Honor that this
13 man, Nestor Vowteras, on the eve of trial, when
14 he was advised by the Court, the propriety of
15 making a decision of getting independant counsel,
16 to aid him so that he would have the assistance of
17 counsel during his trial, was incompetent to make
18 such a decision, and I respectfully submit to your
19 Honor that based on what I have submitted to the
20 Court in these papers, that the least that your
21 Honor should do, prior to sentence, where no one
22 will be prejudiced, is either appoint an independant
23 psychiatrist to examine this man in the light of
24 his history, at his expense, your Honor, not the
25 Government's expense, and/or to direct that a hear-

1
2 ing be held so that these two medical doctors who
3 have submitted these affidavits and who have
4 expressed their opinion of the incompetency of this
5 man as of that date, to be able to make an independant
6 voluntary decision, that if your Honor will hear
7 that, to your Honor's satisfaction, that your Honor
8 would then proceed in accordance with law to grant
9 this man a new trial.

10 THE COURT: Mr. Bergman.

11 MR. BERGMAN: My apologies, your Honor, for
12 not having answering papers to the defendant's motion
13 on Tuesday morning of this week. I swore a jury
14 before Judge Mishler on Monday. I have been on
15 trial since that time. Today is the first free
16 day I have had. In addition, Mr. Lefkowitz has
17 never supplied me with a copy of the in camera
18 proceedings before your Honor, which I assume at
19 this point at least the in camera portion, the
20 feature of it has been waived and I have not as
21 yet seen a copy of those proceedings, and I would
22 appreciate it if Mr. Lefkowitz would send me a
23 copy.

24 MR. LEFKOWITZ: I'd be happy to do so.

25 MR. BERGMAN: Thank you. Furthermore,

1
2 your Honor, I further this week spoke to Mr. Simon
3 of the court reporters, asked him for transcription
4 of the other proceedings of that day, I think the
5 day before -- but I'm not quite certain -- in which
6 the question of conflict was first raised.

7 I had ordered these materials in anticipation
8 of the necessity of filing some answering papers
9 before your Honor. However, I would like to make
10 this comment: the motion which is before this court
11 is, of course, a credit to Mr. Lefkowitz's ingenuity
12 and creative genius.

13 I simply think it's an incredible motion,
14 absolutely incredible motion, because at the same
15 time -- These are comments I make now without
16 prejudice to submitting any law to your Honor --

17 THE COURT: I'm going to decide it today.

18 MR. BERGMAN: At the same time that Mr. Lef-
19 kowitz is claiming that sometime in November that
20 Mr. Nestor Vowter was not competent to choose
21 his own attorney and thereby avoid the prejudice
22 of the conflicting representation, it's quite
23 apparent from the affidavit that Mr. Lefkowitz
24 now represents both defendants in this case,
25 although Mr. Lewis appeared this morning for the

1
2 purpose of sentencing.

3 On that score, if your Honor will just give
4 me a moment, I have underlined it here --

5 THE COURT: Where does he say that?

6 MR. BERGMAN: Paragraph 5, page 3, this is
7 not Mr. Lefkowitz's affidavit but his associate,
8 Mr. Fried, it states, "Since the completion of said
9 trial on or about January 10th, after being retained
10 by Nicholas Vowteras to handle the appeal in the
11 both cases, Jacob P. Lefkowitz" -- and so forth
12 and so on.

13 At this point I'm not going to make any
14 assertions that the Court or the United States
15 Attorney's office is being trifled with, but I
16 suggest from the papers and from what Mr. Lefkowitz
17 has set down, Nestor and Nicholas Vowteras, repre-
18 sented by Mr. Lefkowitz.

19 MR. LEFKOWITZ: He didn't read that. He
20 read to your Honor that I was retained by Mr. Nicholas
21 Vowteras to handle his appeal. What has that got
22 to do with a motion for a new trial on behalf of
23 Nestor Vowteras where I'm representing Nestor
24 Vowteras and nobody else?

25 THE COURT: I take it you're agreeing with

1
2 what I said, there's no conflict of interest.

3 MR. LEFKOWITZ: I do not agree with it at
4 all. If I can be heard on that, I think I can show
5 to your Honor where there is a definite conflict
6 of interest.

7 MR. BERGMAN: I'm not saying that the motion
8 should be decided on that ground alone. I suggest,
9 your Honor, there are certain inferences to be drawn
10 from it, one of which is at the very most, the only
11 claim that Mr. Lefkowitz really is making in these
12 papers is that solely on the day when Nestor Vowteras
13 was questioned by your Honor in camera, was he in-
14 competent and that his incompetency does not extend
15 to the trial or the present period of time when he
16 has retained Mr. Lefkowitz to represent him on appeal,
17 I assume, unencumbered by the overbearing character
18 of his brother Nicholas, as is alleged in the
19 affidavit.

20 Your Honor, I was not present at the in camera
21 proceeding. I did not have the benefit of observing
22 Nestor Vowteras at that time. Of course, I would
23 defer to your Honor's judgment. In a nutshell,
24 your Honor, the defendant is asserting now that in
25 view of what happened at the trial he had to be

1
2 incompetent to assert the kind of defense that he
3 did because this was a defense of entrapment.

4 Your Honor, the Government recognized from
5 the very start this case was indicted, and I spoke
6 to Mr. Lewis at that time, and I will reduce this to
7 affidavit if necessary, the very first time I spoke
8 to Benjamin Louis in connection with this case,
9 shortly after the indictment came down and after
10 I had familiarized myself with the case, I told
11 Mr. Lewis that there was a conflict, at least as
12 I saw in the case; that he ought to explore it.

13 I think the statement that Mr. Lewis per-
14 haps made before we went into the in-camera pro-
15 ceeding and perhaps even in the -- I don't know --
16 indicated his continued awareness of that problem.
17 The eventual defense which was approved by these
18 defendants, of course, negated any difficulty so
19 far as conflict because both defenses were the
20 same defense, defense of entrapment.

21 Nestor's testimony only added -- Nicholas's
22 testimony only added to the defense of entrapment
23 which Nestor was asserting by virtue of the tes-
24 timony.

25 Your Honor, I would have to say that this

1
2 is a frivolous motion, absolutely frivolous motion.

3 Every effort was made by the Court to pro-
4 tect the right to counsel that Nestor Vowter was had.
5 The suggestion that he was incompetent to choose
6 counsel is a gossamer kind of thing in this case.
7 It just doesn't square. It seems to amount to
8 solely that he was incompetent to have lost a trial.

9 THE COURT: Mr. Lefkowitz, what is your
10 claim of conflict of interest?

11 MR. LEFKOWITZ: I'll be specific, but first
12 I would enjoy much more a compliment from my learned
13 colleague if I knew what he really was directing
14 the compliment to be, whether this was ingenious
15 or frivolous.

16 THE COURT: What conflict of interest was
17 that Mr. Nestor Vowter was didn't know about.

18 MR. LEFKOWITZ: Set forth in the DuBare
19 case--

20 THE COURT: The DuBare case was not entrapmen
21 case.

22 MR. LEFKOWITZ: I'm not referring to entrap-
23 ment. I'm referring to what is cogently important
24 to establish a conflict of interest. If one lawyer
25 represents two defendants, and if he places one

1
2 on the stand and would find it difficult to do so
3 because the other defendant that he represents would
4 then not be in a position to vigorously cross-
5 examine him for the purpose of that defendant.

6 You have a definite conflict of interest,
7 and in the DeBare case, the Court pointed out that
8 the question of being able to put a defendant on
9 the stand is most important.

10 I wish to point out to your Honor that
11 I attach to my brief Appendix A, and in that Appen-
12 dix A I quote from the taped conversation that
13 occurred on December 27th, between Nestor and
14 Nicholas Vowteras.

15 "Who knew about this?

16 "Only he and I.

17 Nicholas says right.

18 Nestor says "Only he and I."

19 Nicholas says "Right, we appreciate,
20 right, listen it is."

21 Nestor then replies, "We're together three
22 years. We don't hide nothing from each other."

23 If it please the Court, this jury that tried
24 this case didn't find Mr. Nicholas Vowtera's guilty
25 of all counts in this indictment. The reason for

1
2 that is because except for that last taped conver-
3 sation, there was no connection on the bribery or
4 bribes given to this Agent Cooley except for
5 that conversation.

6 Now, your Honor, if Nicholas Vowterras had
7 independant counsel who gave him true aid and
8 assistance of counsel, he would have taken that
9 stand. He would have shown to the jury by medical
10 testimony his background, his condition.

11 MR. BERGMAN: He did.

12 THE COURT: Let Mr. Lefkowitz continue.

13 MR. LEFKOWITZ: The attorney for Nicholas
14 Vowterras could have cross-examined, whether vigor-
15 ously or astutely, specifically on this question
16 that I have just read to your Honor, which is the
17 only connection, namely, that of December 27th.

18 Now, this man who represented both defendants
19 was on the dilemma who to put on the stand and who
20 to not put on the stand. Your Honor, as happened
21 in this case and as your Honor remarked this morn-
22 ing when I heard you say that in light of your ex-
23 perience you don't believe that an accountant would
24 have done what he did, the other defendant accountant
25 just had a vigorous lawyer who was --

1
2 THE COURT: Sympathetic jury.

3 MR. LEFKOWITZ: Sympathetic jury, Judge.

4 Unfortunately, that's the way it happened. I'm
5 not appearing here before your Honor and your Honor
6 knows me a good many years, and I have tried enough
7 cases before your Honor that you have to accept a
8 fee to appear here after the conviction of a defend-
9 ant on some frivolous matter.

10 Your Honor, if I did not obtain this medical
11 testimony from these two doctors after I questioned
12 him not on one occasion, but on two, and this
13 affidavit of Dr. Ferris was not drawn in my office,
14 it was drawn at 11:00 o'clock in the office of Dr.
15 Ferris, who has a competent secretary-stenographer,
16 so that I was satisfied and I'm not being presumptu-
17 ous because I was satisfied therefore you must be
18 satisfied, but I was satisfied that there was a
19 serious question here.

20 So, starting with the conflict of interest,
21 starting and following it with your Honor's fare-
22 ful, diligent and persuasive effort to make Nestor
23 Vowterias hire a separate counsel, he goes out,
24 consults with nobody, doesn't even call his wife,
25 if it please the Court, but does what I related

1
2 to your Honor, comes back, has that suite, which
3 to me sounded like a concocted tale --

4 THE COURT: Sounds like a story I had heard
5 about John Foster Dulles, when he had an important
6 decision, went out and consulted with God and any-
7 body else, and couldn't change his mind when he
8 came back. That didn't make him incompetent.

9 MR. LEFKOWITZ: The fact is I'm not making
10 him incompetent. What I'm saying to your Honor is
11 if those statements of those doctors stand up to
12 probative value, then I would be incompetent to
13 make such a judgment.

14 THE COURT: I don't read the DeBare case as
15 saying the courts must force co-defendants to hire
16 separate counsel if they choose not to. The quo-
17 tation that you have says that the court should
18 see that the defendant is fully advised as to the
19 facts underlying the potential conflict and is
20 given an opportunity to express his or her views.

21 That was done here. Mr. Nestor Vowteras
22 was before me in the morning and in the afternoon.
23 I observed nothing to question his mental alertness
24 at the time.

25 You have a very selective claim now. You're

1
2 not claiming that he was incompetent to advise
3 counsel concerning his defense of the trial.
4 You're saying he was incompetent only to make a
5 waiver. I don't recognize that kind of selective
6 incompetency. I deny your motion.

7 MR. LEFKOWITZ: I respectfully except.
8 I have done my duty and you have done your job.

9 THE COURT: I will sentence him now.

10 The presentence report indicates, as you say,
11 the defendant had been under psychiatric care.
12 He has been making a good living, married, has two
13 children. This apparently his his first offense.

14 Tell me what you want on his behalf with
15 respect to sentence.

16 MR. LEFKOWITZ: Your Honor, I'm going to
17 remind the Court that on this bribery, I don't
18 know whether it came out, but this fantastic amount
19 of \$15,000 raised on the questioning, and this is
20 on the tape where Cooley, Agent Cooley says, "You
21 expect me to do all this for this?"
22 and he's pointing at a different figure of five.

23 When Nestor Vowterras says, "What do you
24 mean?" and he says, "Come here," and we walked
25 over again and shows him the "five," and says,

1 "Could you want me to do all this for this?"

2 Nestor Vowterras, with his grandiose way, puts a
3 "1" in front of it and that became \$15,000, Judge,
4 which is the highest bribe that I have seen since
5 I have had any bribery cases in this court eight
6 years ago.
7

8 Now, your Honor, I respectfully asked the
9 Court for a hearing, presentence, that if your
10 Honor denied my motion, your Honor would have the
11 benefit of this medical testimony to show that
12 this was not a concocted --

13 THE COURT: I'm going to do it better than
14 that. I'm going to commit him under 4208(b) and
15 get an official report.

16 MR. LEFKOWITZ: Your Honor, I respectfully
17 say to your Honor as a defense lawyer, I certainly
18 don't look for such commitments, Judge, but I have
19 enough confidence in this Court that your Honor
20 in this type of case does what your Honor feels to
21 be consistent with justice, not just to the com-
22 munity but to the defendant.

23 This man, who is sick, your Honor, and he's
24 sick right now, not because he is facing a jail
25 sentence, because of a guilty conviction, but

1
2 but because of his physical and emotional condition,
3 I would respectfully urge upon the Court that your
4 Honor let this man obtain a sentence from you
5 because he's a fit subject for probation, and not
6 put him in jail, which might be very, very dangerous
7 in this case.

8 I think where your Honor has given a sentence
9 as I have heard this morning to Nicholas Vowteras,
10 which means incarceration, even if it is only two
11 months of a twelve-month sentence, I know that your
12 Honor is well aware of the fact that this business
13 which these two brothers have built up in three
14 years time, with their public school education
15 and where they employ forty regular employees who
16 are dependent on their livelihood there, and at
17 the present time, with business conditions as
18 they are, I respectfully submit to your Honor that
19 it would behoove justice and nobody will be hurt
20 or think that anyone hasn't done their duty to
21 the hilt by being vindictive and putting him in
22 jail.

23 I can only urge that upon the Court and I
24 can respectfully say to your Honor that in this
25 case a fine on the part of Nestor Vowteras would

1
2 be suited and consonant with justice.

3 THE COURT: He shows a minus net worth on
4 his balance sheets. He has a lot of phoney figures
5 on there with a cost basis and debts shown to
6 privately held companies.

7 MR. LEFKOWITZ: Your Honor, I'm not --
8 when I submit to your Honor that whatever I have
9 said, your Honor, I think my reputation can be
10 relied on and this is not a situation where I'm
11 submitting that he should be fined and then there
12 is going to be a representation that they find it
13 difficult to get the fine. I may say, your Honor --

14 THE COURT: My thought is by the time he
15 pays the IRS what he owes, he won't have much money.

16 MR. LEFKOWITZ: That's beside the story.

17 THE COURT: It's not besides the story.

18 MR. LEFKOWITZ: I mean regardless of whether--

19 THE COURT: The fine can be collected without
20 waiting for civil determination.

21 MR. LEFKOWITZ: Any tax liability here would
22 take a long time, as your Honor well knows, and it
23 does not commence until criminal proceedings -- it
24 has been the policy of the department, IRS, not to
25 commence until the criminal proceedings are finished.

1
2 I'm representing to your Honor that in
3 view of all the circumstances and in view of the
4 sentence reted out to Nicholas, if your Honor
5 would fine this man and place him on probation,
6 I respectfully submit it would be meeting all
7 standards of justice to the community and to
8 Mr. Vowteras. I truly believe that, sir.

9 THE COURT: Have you any comment?

10 MR. BERGMAN: Yes, I do.

11 Mr. Lefkowitz started out by asking your
12 Honor, as I understood him to say, give the defend-
13 ant some sort of psychiatric evaluation to aid you
14 in sentencing him. Indeed, his prior motions were
15 predicated on this single assertion, that Mr. Vow-
16 teras was in some way diminished so far as his com-
17 petency was concerned.

18 Quite strikingly, when your Honor mentioned
19 he was going to sentence him pursuant to 4208(b) for
20 study and commitment, the course of action which
21 not only your Honor takes in cases such as this
22 where the mental status of the defendant might
23 be in question, but also every other judge in this
24 court in any case, be it a case involving a drug
25 bank robbery or some of the more common serious

1
2 street crimes that are involved; that is, and
3 the Government agrees that that is a proper
4 course of action for a judge in whose discretion
5 the eventual sentence will lie.

6 When your Honor did mention that to Mr.
7 Lefkowitz, the question was quickly abandoned or
8 the suggestion. Mr. Lefkowitz then moved on to
9 his request that probation be granted. His request
10 was based, again, not on the mental status of Mr.
11 Vowteras, but essentially on the financial status
12 that Mr. Vowteras enjoys in the community.

13 There is no doubt that he occupies a responsi-
14 ble position in the community so far as that and
15 he is a successful businessman. He may employ
16 as many as forty people. In essence, what the
17 Government is saying now, your Honor, is that
18 before passing sentence on this defendant, we would
19 wish the Court to consider whether he should be
20 treated in a substantially different way than other
21 defendants who are brought before this court.
22 By that I mean this, your Honor: Congress has seen
23 fit to set a fifteen-year penalty for persons who
24 are selling narcotics under Title 21, 841(a)(1).

25 The sentence, the maximum sentence, under

1
2 that particular sentence is fifteen years. It
3 does not depend, your Honor, upon the amount of
4 narcotics. The statute makes no distinctions
5 along those lines.

6 THE COURT: No, but the judge does.

7 MR. BERGMAN: As a practical matter, the
8 Court does. Your Honor has sentenced a man for
9 twelve years for one ounce of heroin. I don't seek
10 to draw the comparison of heroin and the money given
11 in a bribe. The point is the statute --

12 THE COURT: He doesn't get that money back.

13 MR. BERGMAN: No more so than a heroin dealer
14 gets heroin back. It's contraband in every sense
15 of the word.

16 Congress has seen fit to set the same penalty
17 for bribery as it has for narcotics transactions.
18 In many respects, because there is a triple fine
19 included, we can see that Congress not only recog-
20 nizes the penal necessities and imperatives of such
21 a crime, but it also takes into account the financial
22 situation of a defendant and because it has the
23 penalty, it recognizes the status of the individuals.

24 Your Honor has not seen fit to set a fine
25 in this case. Obviously, and quite correctly,
because the defendants will face more than severe

1
2 financial penalties, I imagine, by virtue of the
3 audit. Nonetheless, your Honor has heard the
4 entire case. Your Honor knows as much about it,
5 I suppose, as I do.

6 This morning when Mr. Nicholas Vowteras was
7 sentenced, your Honor asked if he had comments.
8 No comments were made at that time. At this time,
9 though, the Government has spoken. Based upon the
10 evidence that your Honor heard, I think as between
11 the two, between Nicholas and Nestor, there can be
12 no doubt in terms of culpability.

13 I know your Honor has had reservations in
14 cases such as this by virtue of your belief that
15 perhaps the best thing for the IRS agents when faced
16 with a kind of situation they're faced in this case
17 would be to say to these people, be they Nestor or
18 Nicholas Vowteras, or any person in the future,
19 "We don't accept bribes. I'm straight. You're
20 barking up the wrong tree. Don't make overtures.
21 That's not the policy of the Federal Government,
22 not the policy of the IRS."

23 It's the policy that they do pursue, has
24 been recognized by the Court of Appeals and has
25 been recognized by this Court, but more importantly,

1
2 that policy is recognized by the jury in this case.
3 They did convict Nestor and Nicholas Vowteras.

4 THE COURT: This is the basis for the entrap-
5 ment defense, really, that the revenue agent led
6 him on.

7 MR. BERGMAN: Your Honor, you have had,
8 I think in the last few months perhaps more tax
9 bribery cases than any other judge in this court.
10 I dare say you're more familiar with them. I would
11 venture to say, your Honor, in terms of comparing
12 Cooley's conduct in this case with that of the
13 agent in the Van Cook case and perhaps even the
14 Zalk case, that Cooley measures up well.

15 I'm talking in terms of stupidity--in terms
16 of integrity; the way Cooley testified, conducted
17 himself during this audit, did ever initially --

18 THE COURT: Don't go into that. You're
19 getting onto merits. I don't want Mr. Lefkowitz
20 to argue merits.

21 MR. BERGMAN: I would say this: Mr. Lefkowitz
22 mentioned this was the highest amount of money that
23 he has heard paid in the last eight years that he's
24 been in practice.

25 THE COURT: He's arguing that for a basis to

1
2 say the man didn't know what he was doing.

3 MR. LEFKOWITZ: Of course.

4 THE COURT: Anything more before I call on
5 Nestor? You're entitled to make a statement on
6 your own behalf and in mitigation of punishment.

7 Do you want to say anything to me?

8 THE DEFENDANT: No, I don't.

9 THE COURT: I don't think there's that much
10 difference in culpability here. I have somewhat
11 altered my view with respect to 4208(b) because
12 that would require study in a prison setting for
13 as much as three months and maybe more delay and
14 I don't think that's appropriate under the circum-
15 stances. I don't believe any hearing on psychiatric
16 conditions is appropriate here, Mr. Lefkowitz.

17 Here's a man carrying on a business, living
18 with his family, being a part of the business com-
19 munity, and it is not being suggested that he's so
20 incompetent that he shouldn't have been tried or
21 had insanity defense.

22 I'm going to impose the same sentence that
23 I did on Nicholas: concurrent on one count, one
24 year in prison, sixty days in custody and the balance
25 on probation and Mr. Vowteras, you have a right to

1
2 appeal. I guess the appeal can't be filed until
3 after there's a judgment of conviction.

4 Mr. Lefkowitz has a duty to file that notice
5 and continue to represent you until he's replaced
6 on appeal.

7 I will entertain a motion to stay the
8 execution.

9 MR. LEFKOWITZ: Your Honor, may I respectfully
10 ask that the execution of sentence be stayed pending
11 the appeal. I will file a notice of appeal forth-
12 with.

13 THE COURT: If the appeal results in an
14 affirmance, there will be an opportunity for the two
15 brothers to decide which goes in first. As I said,
16 they should not both be there together. Perhaps
17 there should be some little interruption between.

18 MR LEFKOWITZ: May I ask your Honor at this
19 time if your Honor would consider permitting Nestor
20 Vowteras to serve this sentence in view of the fact
21 it is two months, sixty days, twenty consecutive
22 week-ends, the week-end being considered an
23 entrance?

24 THE COURT: They're quite a burden to West
25 Street. I have used them sometimes when a person

1
2 has a job that he will lose if he's not there, but
3 here, we have two executives.

4 THE DEFENDANT: May I say a few words?

5 THE COURT: Yes.

6 THE DEFENDANT: I get down to work about
7 five every morning. I'm there to eight at night.
8 This is, since my conviction, sixteen hours a day;
9 Saturdays, Sundays. My brother, the partner --
10 I'm there day and night. Without me around there,
11 the place goes to pot.

12 We have good employees, but some of them
13 aren't on the ball; little things that they let go,
14 I never let go.

15 I work very, very hard. I've been a hard
16 worker. My brother and I always worked very hard.

17 He's on the outside a lot; I'm always on
18 the inside. That's why if I can get the week-ends
19 I can go Friday night, Saturday and Sunday night.

20 THE COURT: I'm going to deny it now. We'll
21 see what the situation is after the appeal is
22 determined. Maybe I'll be directed to hold another
23 hearing or maybe the Court of Appeals will follow
24 its present practice and let some less stupid judge
25 handle the case.

1
2 MR. BERGMAN: Would you please order the
3 record unsealed?

4 THE COURT: I see no reason why I shouldn't
5 do that. If there's going to be an appeal on
6 this in reference to the in camera proceeding,
7 I'll direct Mr. Silverman to put on the record
8 and tell Mr. Simon to have the reporter who took
9 it transcribe it.

10
11 ---
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

DEBORAH J. AMUNDSEN, being duly sworn, says that on the 17th day of June 1974, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, ~~X~~ two copies of the Government's Appendix of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereinafter named, at the place and address stated below:

Jacob Lefkowitz, Esq.
150 Broadway
New York, NY 10038

Sworn to before me this
17th day of June 1974

Sylvia E. Morris
SYLVIA E. MORRIS
Notary Public, State of New York
No. 24-4503861
Qualified in Kings County
Commission Expires March 30, 1975

Deborah J. Amundsen
DEBORAH J. AMUNDSEN

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the ____ day of _____, 19____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York,

United States Attorney,
Attorney for _____

To: _____

Attorney for _____

SIR:

PLEASE TAKE NOTICE that the within is a true copy of _____ duly entered herein on the ____ day of _____, in the office of the Clerk of the U. S. District Court for the Eastern District of New York,
Dated: Brooklyn, New York,

United States Attorney,
Attorney for _____

To: _____

Attorney for _____

Action

No. _____

UNITED STATES DISTRICT COURT
Eastern District of New York

—Against—

United States Attorney,
Attorney for _____
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within
is hereby admitted.

Dated: _____, 19____

Attorney for _____